STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

AGENDA
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #005
THURSDAY, JUNE 14, 2012 – 1:30 PM
TN TOWER – 3RD FLOOR - DAVIDSON ROOM

I. Call to Order and Approve Minutes from April 9, 2012 Meeting

II. Report of sub-committee on policy review

III. New Business

a. Proposed "Central Procurement Office Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments"
b. Proposed changes to DGS Purchasing Manual, Section 22.4 as requested by Division of Accounts, Finance and Administration

IV. Other Business

V. Adjournment

CENTRAL PROCUREMENT OFFICE

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

MINUTES OF APRIL 9, 2012 MEETING

STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #004
MONDAY, APRIL 9, 2012
TN TOWER – 3RD FLOOR – DAVIDSON ROOM

Members in Attendance:
Jessica Robertson, Sondra Howe, Kelly Smith, Buddy Lea, Jason Mumpower, Mark Choate

Members in Attendance via Conference Call:
Jay Garrison, Steve Hillis, Melissa Kmiecik, Jim Thompson

Others in Attendance:
Steve Cates, Melinda Parton, Thad Watkins, Mike Perry, Paul Krivacka, Toni Stuart, Abigail Lipshie, Charles Key, Charlotte McKinney (State of Tennessee)

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

Minutes from March 28, 2012 Meeting: Jessica stated that the minutes from the March 28, 2012 meeting had been sent to all Advisory Council on State Procurement (Advisory Council) members for their review and approval. A motion was made by Jason Mumpower, Executive Assistant to the Comptroller, to accept the minutes as submitted. The motion was seconded by Kelly Smith, Assistant Commissioner, Department of General Services. All members voted in favor – none opposed.

I. **Proposed Communications and Negotiations Policy Change**: Jessica stated that after the Communications and Negotiations Policy (Policy) was approved at the Advisory Council meeting of March 28, 2012, some additional edits were made and the suggested changes were emailed to all Advisory Council members on April 5, 2012, for their review and comment (see attached). Steve Hillis, Support Services Manager, City of Alcoa, replied with an email to the full Advisory Council with his proposed changes (see attached).

Jessica asked if there were any questions or discussion regarding Steve's edits. Seeing none, she asked that Steve formally propose that they be adopted as part of the Policy and he did so.

Jessica then asked if there was any discussion on the Policy in general. Jason Mumpower asked that Melinda Parton, Director of Management Services, Comptroller of the Treasury, be recognized. Melinda stated that she would like to add the verbiage "non-competitive negotiations" in the "Purpose" section of the Policy. Jessica clarified for those on the phone that Melinda was asking to add this verbiage so the language would be consistent with current definitions in the existing administrative rules and regulations applicable to procurement.

Jason Mumpower made a motion to add this verbiage and the motion was seconded by Buddy Lea, Assistant Commissioner, Department of Finance and Administration. Jessica asked for a vote and all members voted in favor – none opposed.

Paul Krivacka, Category Management/Legal Team Director, Central Procurement Office, suggested that for consistency we change any reference to the Procurement Office to "Central Procurement Office". Jason Mumpower stated that Melinda had another suggested change. She said that on page two of the Policy, in the second sentence under the heading "Policy and Procedure – Existing Contracts", we should include the verbiage "non-competitive" in front of contract amendments in order to be consistent with current language. Melinda also stated that on page three of the Policy, under "Related Rules and Policies", we should include Rule 0620-3-3-.03(5).

Paul asked the question as to whether this would also affect the 690 rules. Thad indicated that to the extent that there might be a conflict with existing rules, it can be addressed. For consistency purposes, Paul suggested that a review would be a good idea.

At this point, a lengthy discussion was held about non-competitive contract amendments – what they are, when they are needed, when they are required by the Fiscal Review Committee, etc., and whether to include this verbiage in the second sentence under the heading "Policy and Procedure – Existing Contracts." In the end, it was agreed to adopt the Communications and Negotiations Policy with changes as follows and to address the non-competitive contracts at a later date:

- With the recommended edits as shown on the attached Policy
- With the recommended changes submitted by Steve Hillis (attached)
- With Melinda's edit to "Purpose" section as outlined above
- With the addition of the word "Central" in front of any reference to the Procurement Office
- With the addition of Rule 0620-3-3-.03(5) under "Related Rules and Policies" on page three of the Policy

Jason Mumpower made a motion to adopt the Policy with the changes outlined above. The motion was seconded by Kelly Smith. All members voted in favor – none opposed.

Jessica indicated that the Communications and Negotiations Policy will be on the agenda for the Procurement Commission meeting to be held on April 11, 2012.

Adjournment: Seeing no additional questions or business for this meeting, Jessica asked for a motion to adjourn. Motion for adjournment was made by Kelly Smith and seconded by Jason Mumpower. All members voted in favor to adjourn – none opposed.

Attachments

Communications and Negotiations Policy
(as revised per subcommittee recommendations on 3/23/12 and as further revised on 3/29/12)

Effective: Upon passage by the Procurement Commission
Prepared by: Tennessee Department of General Services, Central Procurement Office

Purpose
To establish a consistent, equitable process for communicating, clarifying and negotiating with responsive and responsible proposers viable for contract award during the procurement solicitation process, and negotiation with awarded and contracted vendors.

Scope
This policy applies to all procurements and resulting contracts where the solicitation and award are conducted by the Department of General Services, Central Procurement Office.

Definitions
For purposes of this policy, existing definitions are listed below:

> "Procurement" - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration [Tenn. Code Ann. §4-56-101(6)];
>
> "Proposer" - includes a "bidder" or "proposer" that is a legal entity that has properly registered as required by the state. The terms "bidder" and "proposer" may be used interchangeably for the term "proposer" [Tenn. Code Ann. §4-56-101(7)];
>
> "Responsible bidder" – means a person who has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance [Tenn. Code Ann. §12-3-201(6)]; and
>
> "Responsive bidder" – means a person who has submitted a bid (proposal) which conforms in all material respects to the invitation to bid (Request for Proposal) [Tenn. Code Ann. §12-3-201(7)].

Policy and Procedure – Competitive Procurement Process
All communications, clarifications and negotiations shall be conducted in a manner that supports a transparent competitive procurement process. As appropriate, solicitations should document a statement concerning whether negotiations may be conducted with responsive and responsible proposers who submit proposals determined to fall in the competitive range for award as determined by the Procurement Office. The Central Procurement Office shall assign and maintain a single point of contact

for proposers throughout the procurement process. All communications, clarifications and negotiations shall be memorialized in writing and maintained in the procurement file. Documentation to the procurement shall include, at a minimum, the following documents:

- A log of the date and times of each meeting with a proposer, including the identity of the proposer and their representative
- A description of the nature or reason for all communications with each proposer
- A copy of all written communications, including electronic communications, with each proposer

All communications, clarifications and negotiations shall be conducted in a manner that maintains fairness in the disclosure of information. There shall be no disclosure of the proposal contents until after the intent to award notice is issued by the Central Procurement Office. In conducting communications, clarifications or negotiations with a proposer, information derived from proposals submitted by competing proposers may be used in discussion only if the identity of the proposer providing the information is not disclosed to others. The Central Procurement Office shall provide equivalent information to all proposers with whom communications or negotiations are conducted. Proposer identity shall not be disclosed until after the intent to award notice is issued by the Central Procurement Office. There shall be no public comment on the procurement process until after the intent to award notice is issued.

All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in proposal improvement. All parties involved in the negotiation, performance, or administration of procurements and contracts shall act in good faith. Clarification communications shall ensure all proposers have a reasonable opportunity to address issues such as non-responsiveness, ambiguity, or suspected mistakes. Negotiations shall only be conducted with responsive and responsible proposers falling in the competitive range for award as determined by the Procurement Office. All proposers shall be given fair and equal treatment, therefore equivalent information shall be provided in communications and negotiations and a consistent evaluation process and criteria shall be upheld throughout the procurement. Price negotiations, including target pricing, may be conducted as long as equivalent information is provided to all proposers having a reasonable chance for award. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget considerations, or other method that does not reveal individual proposer pricing. During price negotiations proposers are not obligated to meet or beat target prices, but will not be allowed to increase prices.

Policy and Procedure – Existing Contracts

All existing contract negotiations shall be conducted in good faith and in a manner that supports a transparent process. Negotiations for contract amendments and renewals or extensions must be for scope either within the original scope of work and within the intent and purpose of the original contract, or be a logical extension to the original scope of work. Negotiations shall only be conducted with vendor representatives having authority to negotiate on behalf of their company. Following negotiations,

contract amendments shall clearly detail the additions, deletions, and modifications to the subject contract.

Related Rules and Policies

Rule 0620-3-3-.03(2)(i)
Rule 0620-3-3-.07(1)
Rule 0620-3-3-.07(4)
Rule 0690-3-1-.05(1)
Policy .03a-11
DGS Purchasing Policy 10.

Approval Signature

_____

Jessica Robertson, Chief Procurement Officer

Charlotte McKinney

From: Stephen Hillis [SHillis@cityofalcoa-tn.gov]
Sent: Thursday, April 05, 2012 9:36 AM
To: Charlotte McKinney; Buddy Lea; Charles Key; Hugh Holt; Jason Mumpower; Jay Garrison; Jessica Robertson; Jim Thompson; Kaleigh Black; Kelly K. Smith; Mark Choate; Matt Thompson; Melinda Parton; Melissa Kmiecik; Mike Perry; Paul Krivacka; Shay Oliphant; Sondra Howe; Thaddeus E. Watkins; Toni Stuart
Subject: FW: Advisory Council Meeting/Communications & Negotiations Policy
Attachments: Minutes March 28 2012 Meeting REV with Attachments.pdf; Communications Negotiations Policy Revised 04-05-12.pdf

Charlotte (All), thanks for the amended policy. It looks good but I would make only one comment please with respect to the PURPOSE section.

Specifically with the addition of the terms "Responsive and Responsible" added to assist in defining proposers, the follow-on use of "viable for contract award" becomes redundant. By definition, if a proposer is both responsive and responsible then he/she is viable. Also the term "vendor" in this context is superfluous as the recipient of an award. I would offer the following:

Purpose
To establish a consistent, equitable process for communicating, clarifying and negotiating with responsive and responsible proposers during any authorized solicitation process, including negotiation, for the purpose of determining contract award.

Steve Hillis

From: Charlotte McKinney [mailto:Charlotte.McKinney@tn.gov]
Sent: Thursday, April 05, 2012 9:45 AM
To: Buddy Lea; Charles Key; 'Hugh Holt'; Jason Mumpower; 'Jay Garrison'; Jessica Robertson; 'Jim Thompson'; Kaleigh Black; Kelly K. Smith; 'Mark Choate'; 'Matt Thompson'; Melinda Parton; 'Melissa Kmiecik'; Mike Perry; Paul Krivacka; Shay Oliphant; Sondra Howe; Stephen Hillis; Thaddeus E. Watkins; Toni Stuart
Subject: Advisory Council Meeting/Communications & Negotiations Policy

Good Morning Council Members:

Attached is the latest version of the Communications & Negotiations Policy that will be discussed at the Advisory Council meeting scheduled for Monday, April 9, 2012, at 10:30 a.m. Please note that some additional edits have been made since the Council voted to accept it at the March 28 meeting.

As a reminder, you may dial in for the meeting at: 1-800-807-1534, Passcode: 2193

Or, you may attend in person at the Tennessee Tower, 3rd Floor, Davidson Room. **If you will be attending in person and need visitor parking in our garage – please let me know today.**

Also attached for your review are minutes from the March 28, 2012 meeting.

Thank you and have a great day!

Charlotte McKinney
Executive Administrative Assistant
State of Tennessee

MINUTES OF SUBCOMMITTEE MEETING – MAY 31, 2012

MINUTES
SUBCOMMITTEE OF THE ADVISORY COUNCIL ON STATE PROCUREMENT MEETING
THURSDAY, MAY 31, 2012
TN TOWER – 3RD FLOOR – MORROW CONFERENCE ROOM

Members in Attendance:
Jessica Robertson, Melissa Kmiecik, Buddy Lea, and Jason Mumpower

Members in Attendance via Conference Call:
Sondra Howe

Others in Attendance:
Melinda Parton, Mike Perry, and Paul Krivacka

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

I. **Proposed Central Procurement Office Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments**: The sole matter for approval and recommendation by the Subcommittee was the *Central Procurement Office Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments* (the "Policy"). In advance of the meeting, Ms. Robertson circulated a proposed Policy to all of the Subcommittee members. The purpose of the Policy is to establish a transparent, consistent and equitable process for communicating, clarifying and negotiating with responsible proposers during the procurement solicitation process and negotiation with parties to whom a contract award has been made, including any amendments to such awarded contracts. Prior to the meeting, Mr. Mumpower circulated to the members of the Subcommittee the red-line edits of the Policy prepared by the Office of the Comptroller of the Treasury. After a discussion of these and other changes, Mr. Mumpower moved to approve the Policy subject to the following changes:

- In the first paragraph titled "Purpose" to remove the comma after the word "process" and to substitute the word "proposers" for the word "parties";
- To add defined terms for "Competitive Range" and "Scope of Work";
- To add the language "as detailed in the written solicitation" after the acronym "CPO" in the fourth sentence of the third full paragraph of page 3;
- To delete the first two sentences of the fourth full paragraph on page 3 and substitute with the following:

  The Chief Procurement Officer shall assign and maintain a single point of contact for proposers throughout the procurement process, including with respect to communications and clarifications. Negotiations shall be

conducted by the Chief Procurement Officer, his or her appointed lead negotiator or appointed negotiation team.

- Add the language "Additional State approvals may be required by statute or rules and regulations before such contracts or amendments can be fully executed" after the last bullet point under the first paragraph of the Section titled "*Special Procurement*".

- To delete the first two sentences of the last full paragraph on page 4 and substitute with the following:

  The Chief Procurement Officer shall assign and maintain a single point of contact for proposers throughout the procurement process, including with respect to communications and clarifications. Negotiations shall be conducted by the Chief Procurement Officer, his or her appointed lead negotiator or appointed negotiation team.

A true copy of the Policy as red-lined by the Subcommittee is attached hereto as Exhibit A. Mr. Mumpower's motion was seconded by Mr. Lea. A vote was taken whereupon the Policy, as amended, was unanimously approved for recommendation to the full Advisory Council.

Adjournment: Seeing no additional questions or business for this meeting, Ms. Robertson asked for a motion to adjourn. A motion for adjournment was made by Mr. Mumpower and seconded by Mr. Lea. All members voted in favor to adjourn – none opposed.

Attachments

PROPOSED CENTRAL PROCUREMENT OFFICE CONTRACTING COMMUNICATIONS AND NEGOTIATIONS POLICY & PROCEDURES FOR PROCUREMENTS AND AMENDMENTS

MARKED-UP VERSION

Central Procurement Office
Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments

Effective: Upon approval by the Procurement Commission of the State of Tennessee
Prepared by: The Central Procurement Office of the State of Tennessee

Purpose

To establish a transparent, consistent and equitable process for communicating, clarifying and negotiating with responsive and responsible proposers during the procurement solicitation process~~,~~ and negotiation with ~~proposers~~ parties to whom a contract award has been made, including any amendments to such awarded contracts.

Scope

These policies and procedures apply to all procurements, contract awards and amendments to such awarded contracts when the solicitation and award are conducted by the Central Procurement Office.

Definitions

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

"Competitive Range" – means those proposals that have a reasonable chance for contract award based on criteria set forth in the written solicitation document. ~~determined by the CPO during the evaluation process to have a reasonable chance for contract award.~~ Only proposals within the Competitive Range shall be considered for additional discussions and negotiation. ~~The Competitive Range shall be more particularly delineated in the written solicitation.~~

"Contract Amendment"- means an amendment, renewal and/or extension of an Original Contract, which includes by example only, changes to term, scope of work, pricing and amount of compensation.

"CPO" – means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

"Fair Pricing" – means pricing that is mutually acceptable to the parties after considering:

- the level of competition within the marketplace,
- time sensitivities,
- technical qualifications,
- the scope of work at issue,
- economies of scale benefits,
- the presence of proprietary, intangible, personal or real property rights at issue,
- the scarcity or abundance of manpower or resources, or

- other considerations.

The "Fair Pricing" shall be ascertained after benchmarking for time, labor, pricing, or deliverables when practical and available information exists. Benchmarking shall compare the individual or market basket of goods and services, as applicable, for the contract or amendment at issue in the relevant market place for the relevant period of time.

"Original Contract"- means any contract resulting from a procurement or solicitation process entered into between the State and any person or legal entity.

"Person" – expansively means a natural person, an association, a legal entity or such other entity with the legal capacity to enter into a contract.

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

"Proposer" – expansively includes a "bidder" or "proposer" that is a person or legal entity that has properly registered as required by the State. The terms "bidder" and "proposer" may be used interchangeably for the term "proposer".

"Responsible bidder" – means a person who has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability necessary for good faith performance.

"Responsive bidder" – means a person who has submitted a bid (proposal) which conforms in all material respects to the invitation to bid (Request for Proposal).

"Scope of Work" – means a detailed, written description of the conceptual requirements for the goods or services that are the subject of the procurement. The scope of work should detail what is required of the party to whom a contract award is made.

"Special Procurement" – means a contract procurement without a solicitation, or an amendment to an Original Contract, where the Chief Procurement Officer has determined that the goods or services involve, by way of example only,:

- Equipment or service for which there is no comparably competitive product;
- Public utility services from natural or regulated monopolies;
- A component or replacement part or service for which there is no commercially available substitute and which can be obtained only directly from the manufacturer or provider;
- An item where compatibility is the overriding consideration (e.g., computer operating software or hardware enhancements for an existing system);

- The ability of a vendor to meet a necessary condition dictated by unique circumstances (e.g., the need for immediate delivery or repairs at a particular location or emergency situations); or
- Competitive alternatives that are impractical, unfeasible, or will be to the detriment of the State of Tennessee.

"State" – means the State of Tennessee and its agencies, boards and commissions as the context requires.

Policy and Procedure –Procurement Process

This Policy and Procedure shall act as a frame work for establishing a consistent, equitable process for communicating, clarifying and negotiating with responsive and responsible proposers during the procurement solicitation process. Negotiation with proposers to whom a contract award has been made, including any amendments to such awarded contracts, is discussed below.

As appropriate, solicitations of proposals shall state whether negotiations may be conducted with responsive and responsible proposers, who submit proposals determined to fall in the ~~competitive~~ Competitive ~~range~~ Range as set forth in the proposal, for award as determined by the CPO. All communications, clarifications and negotiations shall be conducted in a transparent and documented manner that is calculated to arrive at Fair Pricing on terms and conditions most advantageous to the State of Tennessee.

Pre-Award and Post-Award

All communications, clarifications and negotiations shall be conducted in a manner that maintains fairness and transparency in the disclosure of information. There shall be no disclosure of the proposal contents until after the intent to award notice is issued by the CPO. In conducting communications, clarifications or negotiations with a proposer, the CPO may use information derived from proposals submitted by competing proposers in discussions, only if the identity of the proposer providing the information is not disclosed to others. The CPO shall provide comparable information to all proposers with whom communications or negotiations are conducted. Proposer identity shall not be disclosed until after the intent to award notice is issued by the CPO. There shall be no public comment on the procurement process until after the intent to award notice is issued.

All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in proposal improvement. All parties involved in the negotiation, performance, or administration of procurements and contracts for the CPO shall act in good faith. All proposers shall have a reasonable opportunity to address issues such as non-responsiveness, ambiguity, or suspected mistakes. Negotiations shall only be conducted with responsive and responsible proposers falling in the ~~competitive~~ Competitive ~~range~~ Range for award as determined by the CPO and as detailed in the written solicitation. All proposers shall be given fair treatment, therefore comparable information shall be provided in communications and negotiations and a consistent evaluation process and criteria shall be upheld throughout the procurement. Price negotiations, including target pricing, may be conducted as

long as written equivalent information is provided to all proposers having a reasonable chance for award. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget considerations, or other method that does not reveal individual proposer pricing. During price negotiations proposers are not obligated to meet or beat target prices, but will not be allowed to increase overall prices.

The Chief Procurement Officer shall assign and maintain a single point of contact for proposers throughout the procurement process~~.~~, including with respect to ~~All~~ communications~~,~~ and clarifications, ~~and negotiations~~ Negotiations shall be conducted by the Chief Procurement Officer, his or her appointed lead negotiator or appointed negotiation team. Documentation of the procurement shall include, at a minimum, the following documents:

- A log of the date and times of each meeting with a proposer, including the identity of the proposer and their representative;
- A description of the nature or reason for all material communications with each proposer; and
- A copy of all written communications, including electronic communications, with each proposer.

Special Procurements

Special procurement of contracts, or amendments to such contracts, shall only be conducted after a determination by the Chief Procurement Officer that the goods or services involve, by way of example only,:

- Equipment or service for which there is no comparably competitive product;
- Public utility services from natural or regulated monopolies;
- A component or replacement part or service for which there is no commercially available substitute and which can be obtained only directly from the manufacturer or provider;
- An item where compatibility is the overriding consideration (e.g., computer operating software or hardware enhancements for an existing system);
- The ability of a vendor to meet a necessary condition dictated by unique circumstances (e.g., the need for immediate delivery or repairs at a particular location or emergency situations); or
- Competitive alternatives are impractical, unfeasible, or will be to the detriment of the State of Tennessee.

Additional State approvals may be required by statute or rules and regulations before such contracts or amendments can be fully executed.

The Chief Procurement Officer shall assign and maintain a single point of contact for proposers throughout the procurement process~~.~~ ~~All~~ including with respect to communications~~,~~ and clarifications ~~and, negotiations~~ Negotiations shall be conducted by the Chief Procurement Officer, his or her appointed

lead negotiator or appointed negotiation team. Documentation of the special procurement shall include, at a minimum, the following documents:

- An analysis of viable alternate options available and the benefits of pursuing direct negotiation instead of competitive alternatives;
- A determination that the contract or amendment procured pursuant to direct negotiation results in a contract or amendment at Fair Pricing on terms and conditions most advantageous to the State of Tennessee;
- A log of the date and times of each meeting with a proposer, including the identity of the proposer and their representative;
- A description of the nature or reason for all material communications with each proposer; and
- A copy of all written communications, including electronic communications, with each proposer.

Policy and Procedure – Existing Contracts

All existing contract negotiations for a Contract Amendment shall be conducted in good faith and in a manner that supports a transparent process. Negotiations for Contract Amendments or renewals or extensions or to provide additional goods or services must be for scope, (i) within the scope of work set forth in the Original Contract and within the intent and purpose of the Original Contract, or (ii) that is a logical extension of the scope of work in the Original Contract. Negotiations shall only be conducted with vendor representatives having authority to negotiate on behalf of their company.

In determining whether the State's best interests are served by accepting the proposal of an existing vendor resulting from negotiations conducted relative to a Contract Amendment (a "Vendor Proposal"), the Chief Procurement Officer, or his or her designee, shall determine whether the pricing provided in the Vendor Proposal represents Fair Pricing and provides benefits to the State that outweigh the benefits to the State that could be obtained by procuring the scope of work through a solicitation to the marketplace. The determination of the Chief Procurement Officer that the benefits to the State from accepting the Vendor Proposal outweigh the benefits to the State that could be obtained through a solicitation to the marketplace must be articulated in writing and may be based on one or more of the following rationales (this list is intended to be exemplary and not exhaustive): (1) scope of work is too limited to elicit competitive bids that would provide cost savings; (2) time delays resulting from competitive procurement process would harm the State; (3); whether the resulting contract, as amended, reflects Fair Pricing on terms and conditions that are most advantageous to the State of Tennessee; and (4) whether the existing vendor is the most qualified or only vendor of such goods or services (as determined through initial bid responses or approval of a sole source contract). Following such a determination, a Contract Amendment executed by the parties shall clearly detail the additions, deletions, and modifications to the Original Contract.

SOURCES

State of Georgia Procurement Manual

The Virginia Public Procurement Act Guide for Local Government

The Virginia Public Procurement Act, Chapter 7, Competitive Negotiation

Comparative Review of State IT Procurement Practices, NASPO

New York State Science & Technology Law Center, Model Negotiation Policies

Illinois Administrative Code, Westlaw

Code of Maryland Regulations, Westlaw

Code of Massachusetts Regulations, Westlaw

Mississippi Administrative Code, Westlaw

Illinois Central Bureau of Land Acquisition, Negotiation Policies and Procedures

Regulations of Connecticut State Agencies

Oklahoma Department of Central Services, Central Purchasing Administrative Rules

State of South Carolina, Classifying Proposals and Conducting Discussions

Commonwealth of Pennsylvania, Bureau of Procurement, Procurement Handbook

PROPOSED CENTRAL PROCUREMENT OFFICE CONTRACTING COMMUNICATIONS AND NEGOTIATIONS POLICY & PROCEDURES FOR PROCUREMENTS AND AMENDMENTS

CLEAN VERSION

Central Procurement Office
Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments

Effective: Upon approval by the Procurement Commission of the State of Tennessee
Prepared by: The Central Procurement Office of the State of Tennessee

Purpose

To establish a transparent, consistent and equitable process for communicating, clarifying and negotiating with responsive and responsible proposers during the procurement solicitation process, and negotiation with parties to whom a contract award has been made, including any amendments to such awarded contracts.

Scope

These policies and procedures apply to all procurements, contract awards and amendments to such awarded contracts when the solicitation and award are conducted by the Central Procurement Office.

Definitions

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

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

"Contract Amendment"- means an amendment, renewal and/or extension of an Original Contract, which includes by example only, changes to term, scope of work, pricing and amount of compensation.

"CPO" – means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

"Fair Pricing" – means pricing that is mutually acceptable to the parties after considering:

- the level of competition within the marketplace,
- time sensitivities,
- technical qualifications,
- the scope of work at issue,
- economies of scale benefits,
- the presence of proprietary, intangible, personal or real property rights at issue,
- the scarcity or abundance of manpower or resources, or
- other considerations.

The "Fair Pricing" shall be ascertained after benchmarking for time, labor, pricing, or deliverables when practical and available information exists. Benchmarking shall compare the individual or market basket of goods and services, as applicable, for the contract or amendment at issue in the relevant market place for the relevant period of time.

"Original Contract"- means any contract resulting from a procurement or solicitation process entered into between the State and any person or legal entity.

"Person" – expansively means a natural person, an association, a legal entity or such other entity with the legal capacity to enter into a contract.

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

"Proposer" – expansively includes a "bidder" or "proposer" that is a person or legal entity that has properly registered as required by the State. The terms "bidder" and "proposer" may be used interchangeably for the term "proposer".

"Responsible bidder" – means a person who has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability necessary for good faith performance.

"Responsive bidder" – means a person who has submitted a bid (proposal) which conforms in all material respects to the invitation to bid (Request for Proposal).

"Scope of Work" – means a detailed, written description of the conceptual requirements for the goods or services that are the subject of the procurement. The scope of work should detail what is required of the party to whom a contract award is made.

"Special Procurement" – means a contract procurement without a solicitation, or an amendment to an Original Contract, where the Chief Procurement Officer has determined that the goods or services involve, by way of example only,:

- Equipment or service for which there is no comparably competitive product;
- Public utility services from natural or regulated monopolies;
- A component or replacement part or service for which there is no commercially available substitute and which can be obtained only directly from the manufacturer or provider;
- An item where compatibility is the overriding consideration (e.g., computer operating software or hardware enhancements for an existing system);
- The ability of a vendor to meet a necessary condition dictated by unique circumstances (e.g., the need for immediate delivery or repairs at a particular location or emergency situations); or

- Competitive alternatives that are impractical, unfeasible, or will be to the detriment of the State of Tennessee.

"State" – means the State of Tennessee and its agencies, boards and commissions as the context requires.

Policy and Procedure –Procurement Process

This Policy and Procedure shall act as a frame work for establishing a consistent, equitable process for communicating, clarifying and negotiating with responsive and responsible proposers during the procurement solicitation process. Negotiation with proposers to whom a contract award has been made, including any amendments to such awarded contracts, is discussed below.

As appropriate, solicitations of proposals shall state whether negotiations may be conducted with responsive and responsible proposers, who submit proposals determined to fall in the Competitive Range as set forth in the proposal, for award as determined by the CPO. All communications, clarifications and negotiations shall be conducted in a transparent and documented manner that is calculated to arrive at Fair Pricing on terms and conditions most advantageous to the State of Tennessee.

Pre-Award and Post-Award

All communications, clarifications and negotiations shall be conducted in a manner that maintains fairness and transparency in the disclosure of information. There shall be no disclosure of the proposal contents until after the intent to award notice is issued by the CPO. In conducting communications, clarifications or negotiations with a proposer, the CPO may use information derived from proposals submitted by competing proposers in discussions, only if the identity of the proposer providing the information is not disclosed to others. The CPO shall provide comparable information to all proposers with whom communications or negotiations are conducted. Proposer identity shall not be disclosed until after the intent to award notice is issued by the CPO. There shall be no public comment on the procurement process until after the intent to award notice is issued.

All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in proposal improvement. All parties involved in the negotiation, performance, or administration of procurements and contracts for the CPO shall act in good faith. All proposers shall have a reasonable opportunity to address issues such as non-responsiveness, ambiguity, or suspected mistakes. Negotiations shall only be conducted with responsive and responsible proposers falling in the Competitive Range for award as determined by the CPO and as detailed in the written solicitation. All proposers shall be given fair treatment, therefore comparable information shall be provided in communications and negotiations and a consistent evaluation process and criteria shall be upheld throughout the procurement. Price negotiations, including target pricing, may be conducted as long as written equivalent information is provided to all proposers having a reasonable chance for award. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget considerations, or other method that does not reveal individual proposer pricing. During price

negotiations proposers are not obligated to meet or beat target prices, but will not be allowed to increase overall prices.

The Chief Procurement Officer shall assign and maintain a single point of contact for proposers throughout the procurement process, including with respect to communications and clarifications. Negotiations shall be conducted by the Chief Procurement Officer, his or her appointed lead negotiator or appointed negotiation team. Documentation of the procurement shall include, at a minimum, the following documents:

- A log of the date and times of each meeting with a proposer, including the identity of the proposer and their representative;
- A description of the nature or reason for all material communications with each proposer; and
- A copy of all written communications, including electronic communications, with each proposer.

Special Procurements

Special procurement of contracts, or amendments to such contracts, shall only be conducted after a determination by the Chief Procurement Officer that the goods or services involve, by way of example only,:

- Equipment or service for which there is no comparably competitive product;
- Public utility services from natural or regulated monopolies;
- A component or replacement part or service for which there is no commercially available substitute and which can be obtained only directly from the manufacturer or provider;
- An item where compatibility is the overriding consideration (e.g., computer operating software or hardware enhancements for an existing system);
- The ability of a vendor to meet a necessary condition dictated by unique circumstances (e.g., the need for immediate delivery or repairs at a particular location or emergency situations); or
- Competitive alternatives are impractical, unfeasible, or will be to the detriment of the State of Tennessee.

Additional State approvals may be required by statute or rules and regulations before such contracts or amendments can be fully executed.

The Chief Procurement Officer shall assign and maintain a single point of contact for proposers throughout the procurement process, including with respect to communications and clarifications. Negotiations shall be conducted by the Chief Procurement Officer, his or her appointed lead negotiator or appointed negotiation team. Documentation of the special procurement shall include, at a minimum, the following documents:

- An analysis of viable alternate options available and the benefits of pursuing direct negotiation instead of competitive alternatives;

- A determination that the contract or amendment procured pursuant to direct negotiation results in a contract or amendment at Fair Pricing on terms and conditions most advantageous to the State of Tennessee;
- A log of the date and times of each meeting with a proposer, including the identity of the proposer and their representative;
- A description of the nature or reason for all material communications with each proposer; and
- A copy of all written communications, including electronic communications, with each proposer.

Policy and Procedure – Existing Contracts

All existing contract negotiations for a Contract Amendment shall be conducted in good faith and in a manner that supports a transparent process. Negotiations for Contract Amendments or renewals or extensions or to provide additional goods or services must be for scope, (i) within the scope of work set forth in the Original Contract and within the intent and purpose of the Original Contract, or (ii) that is a logical extension of the scope of work in the Original Contract. Negotiations shall only be conducted with vendor representatives having authority to negotiate on behalf of their company.

In determining whether the State's best interests are served by accepting the proposal of an existing vendor resulting from negotiations conducted relative to a Contract Amendment (a "Vendor Proposal"), the Chief Procurement Officer, or his or her designee, shall determine whether the pricing provided in the Vendor Proposal represents Fair Pricing and provides benefits to the State that outweigh the benefits to the State that could be obtained by procuring the scope of work through a solicitation to the marketplace. The determination of the Chief Procurement Officer that the benefits to the State from accepting the Vendor Proposal outweigh the benefits to the State that could be obtained through a solicitation to the marketplace must be articulated in writing and may be based on one or more of the following rationales (this list is intended to be exemplary and not exhaustive): (1) scope of work is too limited to elicit competitive bids that would provide cost savings; (2) time delays resulting from competitive procurement process would harm the State; (3); whether the resulting contract, as amended, reflects Fair Pricing on terms and conditions that are most advantageous to the State of Tennessee; and (4) whether the existing vendor is the most qualified or only vendor of such goods or services (as determined through initial bid responses or approval of a sole source contract). Following such a determination, a Contract Amendment executed by the parties shall clearly detail the additions, deletions, and modifications to the Original Contract.

SOURCES

State of Georgia Procurement Manual

The Virginia Public Procurement Act Guide for Local Government

The Virginia Public Procurement Act, Chapter 7, Competitive Negotiation

Comparative Review of State IT Procurement Practices, NASPO

New York State Science & Technology Law Center, Model Negotiation Policies

Illinois Administrative Code, Westlaw

Code of Maryland Regulations, Westlaw

Code of Massachusetts Regulations, Westlaw

Mississippi Administrative Code, Westlaw

Illinois Central Bureau of Land Acquisition, Negotiation Policies and Procedures

Regulations of Connecticut State Agencies

Oklahoma Department of Central Services, Central Purchasing Administrative Rules

State of South Carolina, Classifying Proposals and Conducting Discussions

Commonwealth of Pennsylvania, Bureau of Procurement, Procurement Handbook

PROPOSED CHANGES TO DGS PURCHASING MANUAL SECTION 22.4

MARKED-UP VERSION

Section 22.4 of DGS Purchasing Manual
Marked- up Version
Deleted Language is in Strike-through font (read as "~~strike-through font~~")
Additional language is in red font (read as "red font")

22.4. ~~Prior Approval Required~~ Prior Authorization Required

~~This list includes purchases which do not require purchase orders but which should be made by contract or authorization approved by either Department of Finance and Administration (F&A), Department of Human Resources (DOHR), or Department of General Services Purchasing Division pursuant to applicable rules and procedures as indicated and approved by:~~

This list includes purchases which do not require purchase orders, but which should be made by contract or authorization approved by the Department of General Services, pursuant to applicable rules and procedures as indicated.

1. Fees for personal, consultant, and professional services. ~~Examples are doctors, lawyers, veterinarians, architects, consultants, court reporters, interpreters, ambulance, demurrage, appraisals (F & A Rules, Chapter 0620-3-3, and DOHR)~~ (Rules established by the Department of General Services, Central Procurement Office);
2. Rental or lease of property ~~(F&A)~~ (Department of General Services, Real Estate Asset Management);
3. Purchase of artifacts for historical or commemorative purposes ~~(Purchasing);~~ (Department of General Services, Central Procurement Office).
4. ~~Tuition, fees and supplies for training of individuals. (the Department of Human Resources on Form 602, Out Service Training Nomination, for State employees by the Department of Finance and Administration for other individuals);~~
5. ~~Occasional charges for rooms for meetings, and attendant expenses in excess of $200 per day for a maximum of five (5) days would be required. The $200 per day maximum would be totally inclusive of all charges for the day (F&A);~~
6. ~~Convention fees/Registration fees in excess of $100 per individual for a maximum of ten (10) individuals (F&A);~~
7. ~~Association entry fees (F&A).~~
8. ~~Organization membership dues and subscriptions to newspapers, periodicals, newsletters, or pamphlets (F&A, Policy 10);~~
9. ~~An employee's moving expenses. (F&A);~~
10. ~~Rental of passenger vehicles (F&A);~~
11. ~~Purchase of awards for State employees (DOHR);~~
12. ~~Purchase of awards for private citizens (F&A);~~
13. ~~Honoraria and attendant expenses (F&A); or~~

~~14. Insurance policies (F&A) or an appropriate committee as required by law.~~

PROPOSED CHANGES TO DGS PURCHASING MANUAL SECTION 22.4

CLEAN VERSION

22.4 Prior Authorization Required

This list includes purchases which do not require purchase orders, but which should be made by contract or authorization approved by the Department of General Services, pursuant to applicable rules and procedures as indicated.

1. Fees for personal, consultant, and professional services. (Rules established by the Department of General Services, Central Procurement Office).

2. Rental or lease of property (Department of General Services, Real Estate Asset Management).

3. Purchase of artifacts for historical or commemorative purposes (Department of General Services, Central Procurement Office).