

AMENDED 8-22-13
Policy Number 2013-004
Central Procurement Office
Contract Management Policy and Procedures

Effective: August 22, 2013

Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To establish a uniform policy governing the State's contracts for goods and services. This policy shall provide guidance to State procurement professionals in determining which contract to use and to highlight distinguishing factors or considerations for each contract type. This policy also provides guidance and describes the approval process for each contract type (including original contract, amendments, renewals and terminations) and contract management. Finally, this policy delineates the party responsible for contract management. This Contract Management Policy and Procedures will be further augmented by the Central Procurement Office's Contract Manual.

2. Scope.

The scope of this policy includes all contracts procured under the jurisdiction of the Central Procurement Office.

3. Definitions.

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

“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 for a single State Agency.

"Award" – in the context of a Grant Contract 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 “Award” in the context of a procurement shall mean the award of a contract to a Contracting Party pursuant to a procurement.

“Contract Manager” – means, with respect to a Statewide Contract, the category specialist responsible for the procurement or such other person as appointed by the Chief Procurement Officer to act as the Contract Manager. “Contract Manager” with respect to an Agency Term Contract shall mean the State Agency official appointed by the State Agency to act as the person responsible for contract management.

“Contracting Party” – means a party to a contract with the State to provide goods or services.

“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 State Agency within specified limits and guidelines.

“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,
- learning curve costs,
- the presence of proprietary, intangible, personal or real property rights at issue,
- the scarcity or abundance of manpower and resources, or
- other considerations.

The “Fair Pricing” shall be ascertained after benchmarking for time, labor, pricing, or deliverables when practicable. 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.

“Grant Contract” – means a written contract to facilitate an Award to a Grantee or Subrecipient. “Grant Contract” does not include an Award with the primary purpose of procuring an end product for a Grantor State Agency, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be procured on a competitive basis.

“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.

“No Cost Contract” means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

“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.

“Purchase Order” means a written or electronic 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.

“Revenue Contract” means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

“Rules” means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

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

“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.

“Utility Contact” – means a contract for 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.

4. Contract Types.

All contracts awarded pursuant to a procurement event shall meet the requirements of the Rules and Central Procurement Office Policy. A contract shall be one of the following contract types:

- *Agency Term Contracts*
- *Statewide Contracts*
- *Purchase Orders*
- *No Cost Contracts*
- *Revenue Contracts*
- *Grant Contracts*
- *Utility Contracts*

4.1. Agency Term Contracts.

4.1.1. Description of Agency Term Contracts.

An Agency Term Contract is a written contract for goods or services for a specified term for the benefit of a single State Agency. The parties to an Agency Term Contract include, at a minimum, the State, acting by and through one of its agencies or instrumentalities and one or more Contracting Parties with the legal capacity to enter into contracts or to sue and be sued.

4.1.2. Condition of Use for Agency Term Contracts.

An Agency Term Contract should be used when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term period. Agency Term Contracts shall be used where

performance by the Contracting Party cannot be completed in less than ninety (90) days. The Chief Procurement Officer may establish a Statewide Contract for common goods or services needed by more than one State Agency. The Central Procurement Office or Delegated State Agencies may establish Agency Term Contracts for goods or services needed solely and uniquely by their agency in accordance with the Rules or Central Procurement Office Policy.

4.1.3. *Management of Agency Term Contracts.*

After the award of an Agency Term Contract, the State Agency procuring the Agency Term Contract shall have primary responsibility for managing the contract, which includes decisions concerning extensions and renewals. The Central Procurement Office shall have compliance responsibility over all Statewide Contracts, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination. State Agencies shall manage all contracts for which the State Agency is primarily responsible in accordance with the Rules and Central Procurement Office Policy. All contract management plans of State Agencies shall comply with the Rules and Central Procurement Office Policy in terms of form, content, amendments or modifications, and reporting.

4.2. *Statewide Contracts.*

4.2.1. *Description of Statewide Contract.*

A Statewide Contract is a contract for goods or services established by the Central Procurement Office that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities. The purpose of a Statewide Contract is to obtain a source of supply for commonly procured goods or services for the State, its Agencies, local governments, higher education and not-for-profit entities.

4.2.2. *Condition of Use for Statewide Contract.*

Only a contract that benefits two or more State Agencies will be considered a Statewide Contract. A contract that otherwise meets the requirements of a Statewide Contract, but is restricted to certain State Agencies is a Restricted Statewide Contract. Only the Central Procurement Office has authority to procure and award a Statewide or Restricted Statewide Contract.

4.2.3. *Management of Statewide Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Statewide Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. All State Agencies are required to procure goods and services from Statewide Contracts when

practicable. No State Agencies shall procure goods or services that are within the scope of a Statewide Contract without first obtaining the consent of the Chief Procurement Officer. Grounds for the Chief Procurement Officer's approval of a State Agency's request to procure goods or services outside a Statewide Contract may include, by way of example only, Contracting Party's past performance and concerns over future performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. The Central Procurement Office shall also have compliance responsibility over all Statewide Contracts, which includes, by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.3. *Purchase Orders.*

4.3.1. *Description of Purchase Order.*

A Purchase Order is a commercial document (issued electronically or on hard copy), generated by the Edison System (except procurements made pursuant to a natural or declared disaster), that indicates types, quantities and agreed upon prices for goods or services. A State Agency issuing a Purchase Order to a supplier constitutes an offer to buy goods or services, and acceptance of a Purchase Order by a supplier forms a contract between the parties.

4.3.2. *Condition of Use for Purchase Order.*

A Purchase Order is generally used for those procurements of goods or services where performance can be completed in less than ninety (90) days or that represent a single transaction. An Agency Term or Statewide Contract must be used for any procurement of goods or services where Contracting Party performance cannot be completed within ninety (90) days.

4.3.3. *Management of Purchase Orders.*

After issuance of a purchase order, the State Agency issuing a Purchase Order for goods or services shall have primary responsibility for managing the Purchase Order. State Agencies shall also have compliance responsibility over all Purchase Orders that it issues or that are issued on the State Agency's behalf, which includes by way of example only, Contracting Party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

4.4. *No Cost Contracts.*

4.4.1. *Description of No Cost Contract.*

A No Cost Contract is a written contract entered between the State and a Contracting Party that does not involve a payment or create a pecuniary obligation of the State to the Contracting Party.

4.4.2. *Condition of Use for No Cost Contract.*

A No Cost Contract may be used when there is no payment or pecuniary obligation of the State to the Contracting Party, and when goods or services, as defined in the scope of work, will be provided over an established period of time, known as the contract term. A No Cost Contract can be either an Agency Term Contract or a Statewide Contract.

4.4.3. *Management of No Cost Contracts.*

A Statewide No Cost Contract will be managed by the Central Procurement Office in the same manner as all other Statewide Contracts. An Agency Term Contract that is a No Cost Contract will be managed by the State Agency procuring the No Cost Contract in the same manner that a State Agency manages all other Agency Term Contracts.

4.5. *Revenue Contracts.*

4.5.1. *Description of Revenue Contract.*

A Revenue Contract is a standard written contract entered into between the State and a Contracting Party where the State provides goods or services for payment by a Contracting Party.

4.5.2. *Condition of Use for Revenue Contract.*

A Revenue Contract may be used where the State provides goods or services to a Contracting Party for payment, and when goods or services, as defined in the scope of work, will be provided over an established period of time.

4.5.3. *Management of Revenue Contracts.*

After contract award, the State Agency entering into a Revenue Contract shall have primary responsibility for managing all aspects of the Revenue Contract, which includes, by way of example, decisions concerning extensions, renewals or revenue increases or decreases. State Agencies shall also have compliance responsibility over all Revenue Contracts, which includes by way of example

only, Contracting Party compliance, notice of default, curing performance and contract termination.

4.6. *Grant Contracts.*

4.6.1. *Description of Grant Contracts.*

A Grant Contract is a written contract between the State, a grantor, a natural person or a legal entity to facilitate an Award to a person or legal entity to support a program authorized by law.

4.6.2. *Condition for Use of Grant Contracts.*

A Grant Contract should be used to facilitate an Award, but should not be used where the true object of the contract is to purchase goods or services for the Grantor State Agency. State Agencies that have entered into Grant Contracts with other State Agencies that create subrecipient grant relationships should continue to use a Grant Contract to memorialize the subrecipient grant relationship.

4.6.3. *Management of Grant Contracts.*

The Grantor State Agency shall be primarily responsible for managing a Grant Contract in accordance with the *Grant Management and Subrecipient Monitoring Policy*.

4.7. *Utility Contracts.*

4.7.1. *Description of Utility Contracts.*

A Utility Contract is a contract between the State and a private or public legal entity that is regulated by one or more states or the federal government as a public utility.

4.7.2. *Condition for Use of Utility Contracts.*

A Utility Contract should only be used for the procurement of utilities.

4.7.3. *Management of Utility Contracts.*

The Central Procurement Office shall have primary responsibility for procuring and managing all Utility Contracts, which includes by way of example only, decisions concerning extensions, renewals or price increases. No State Agency shall procure any goods or services that are within the scope of a Utility Contract without first obtaining the consent of the Chief Procurement Officer. The Central Procurement Office shall also have compliance responsibility over all Utility Contracts, which includes by way of example only, Contracting Party compliance,

merchantability of goods, acceptability of services, notice of default, curing performance and contract termination.

5. Contract Terms and Conditions.

5.1. General Requirements of Terms and Conditions.

All contracts must be in writing and contain such terms and conditions as set forth in contract templates prescribed by the Chief Procurement Officer, the Rules, or Central Procurement Office Policy.

5.2. Termination and Length of Term.

All contracts shall contain a provision that allows the State to terminate for convenience upon a period of time prescribed by the State unless otherwise approved by the Chief Procurement Officer. All contracts shall also contain a provision that allows the State to terminate for lack of funding. The length of a contract, including all renewals, shall not exceed sixty (60) months unless a longer term is approved by the Chief Procurement Officer as being in the State's best interests.

5.3. Prohibited Terms and Conditions.

5.3.1. Indemnification and Hold Harmless.

Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

5.3.2. Limitations of Liability.

All limitations of liability must comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 and Central Procurement Office Policy. Limitations of Liability that do not comply with Tenn. Code Ann. §§ 12-3-314 and 12-4-119 or Central Procurement Office Policy are prohibited. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited. 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.

5.3.3. Bonus Payments.

Bonus payment provisions are prohibited for all contracts subject to these Rules.

6. Approval Process for Statewide and Agency Term Contracts and Amendments.

6.1. Minimum Approvals.

All Agency Term Contracts shall be approved by the head of the State Agency and the Chief Procurement Officer or any other state officials as required by statute or rule. All Statewide Contracts shall be approved by the Chief Procurement Officer. Except for Agency Term Contracts procured by a Delegated State Agency, the Central Procurement Office shall initiate a Statewide or Agency Term Contract or amendment approval through the Edison System. The Delegated State Agency shall initiate approval of an Agency Term Contract procured by the Delegated State Agency, or an amendment to such contract, by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office.

6.2. Additional Approvals.

Additional approvals are required for all contracts or amendments that fall within the following types of contract scope of services:

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> Information technology 	OIR Endorsement
<ul style="list-style-type: none"> Medical/mental health-related professional, pharmaceutical, laboratory, or imaging 	F&A eHealth Initiative Endorsement
<ul style="list-style-type: none"> Contract between State Agencies that includes provisions for cooperative programs; Provision for State legal consultation services 	Governor
<ul style="list-style-type: none"> Provision for State legal consultation services 	Attorney General ¹
<ul style="list-style-type: none"> Contract with an individual; Contract that involves training State employees (except training pursuant to an information technology system procurement); Services relating to the employment of current or prospective State employees 	Human Resources Commissioner

¹ See Tenn. Code Ann. § 8-6-106.

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> • Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of Tennessee has an interest 	State Architect
<ul style="list-style-type: none"> • Delegation of procurement or contract authority by the CPO; • Procurements for goods and services where authority exists under both the SBC and CPO to procure and contract; • Auditing services; • Cooperative agreements as provided in § 12-3-512; • Fee-For-Service procurements or contracts with a maximum liability > \$5,000,000; • Grant contracts with a maximum liability > \$5,000,000; • Fee-For-Service procurements or contracts for new or replacement information systems and technical infrastructure projects for goods and services > \$500,000; • Procurements or contracts utilizing competitive or non-competitive negotiations with a maximum liability > \$250,000; • Revenue procurements/contracts; • No-Cost procurements/contracts; • Procurements/contracts with a term > 60 months (5 years); • Procurements/contracts that propose to limit liability to < 2 times the maximum liability; • Procurements/contracts that propose to change the Records, Annual Report, Audit, or Monitoring clauses; • Procurements/contracts that allow for 	Comptroller of the Treasury ²

² Pursuant to Tenn. Code Ann. § 4-56-108(b), without limitation of the audit authority of the comptroller of the treasury, the comptroller is authorized to examine any documents under the authority of the chief procurement officer.

Contract Subject Matter	Required Approval or Endorsement
<p>the negotiation of a necessary, mandatory, or standard contract clause;</p> <ul style="list-style-type: none"> • Procurements allowing a cost proposal to be evaluated contemporaneously with or prior to the technical proposal evaluation; • Procurements/contracts containing an automatic price escalator; and • Such other procurements/contracts or other items as may be directed by the Commissioner of Finance and Administration or by the Commission. 	
<ul style="list-style-type: none"> • All requests to procure goods or services by negotiation with a single service provider (a noncompetitive contract) having a term of more than one (1) year or which contain term extension language authorizing a term of greater than one (1) year AND a cumulative value of \$250,000 or more; and • All amendments to a contract, whether competitively or noncompetitively procured, meeting the above term and dollar threshold requirements where the amendment: 1) increases or decreases the maximum liability, 2) extends or shortens the contract term, 3) changes the entity or name of the entity with which the State is contracting, or 4) otherwise changes an original contract or amended contract in a substantive manner. 	Fiscal Review Committee ³

Additionally, all contracts or amendments to such contracts with a duration period of more than twelve (12) months must be approved by the Office of the Comptroller. Amendments and renewals must follow the same approval process as that of the original, or base, contract. The

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

termination of a contract, for any reason, must be approved by the Chief Procurement Officer (or Delegated State Agency official by Chief Procurement Officer) and filed by the affected State Agency with the Office of the Comptroller.

7. Fiscal Review – Generally.

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

- (1) All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of \$250,000 or more;
- (2) Any amendment to a contract described in subdivision (1), whether originally procured competitively or noncompetitively which:
 - a. Increases or decreases funding;
 - b. Extends or shortens the contract term;
 - c. Changes the entity or name of the entity with which the State is contracting; or
 - d. Otherwise changes an original or amended contract in a substantive manner.

8. Interagency Agreements.

8.1. Description of Interagency Agreement.

An Interagency Agreement is a written document that describes a bilateral or multilateral agreement between State agencies. This type of document should memorialize the description of duties for each State Agency, any applicable exchange of funds and the term for the agreement.

8.2. Condition of Use for Interagency Agreement.

An Interagency Agreement should be used to memorialize one or more State Agencies' agreement and should be used when the parties (State Agencies) do not have the legal capacity to contract or sue and be sued by one another. While Interagency Agreements should be tracked in the Edison system, these agreements are exempt from the requirements of the Rules and Central Procurement Office Policy and they do not require the approval of the Chief Procurement Officer. The Central Procurement Office shall prescribe or approve the form of Interagency Agreement that will be used by State Agencies.

8.3. *Management of Interagency Agreements.*

The State Agency parties to an Interagency Agreement shall have primary responsibility for managing the Interagency Agreement, which includes by way of example only, decisions concerning extensions, renewals or price increases. State Agency parties to an Interagency Agreement shall also have compliance responsibility over all Interagency Agreements, which includes by way of example only, State Agency party compliance, acceptability of goods or services, notice of default, curing performance and contract termination.

Related Statutes, Rules and Policies

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

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

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