AMENDED

PROCUREMENT PROCEDURES MANUAL OF

THE CENTRAL PROCUREMENT OFFICE

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1. Introduction.

The purpose of this Procurement Procedures Manual ("Manual") is to provide guidance and detailed procedures concerning organizational structure, planning, solicitations, procurement methods, procurement administration, contract award and contract management to supplement the requirements of Tennessee procurement statutes, rules and regulations, and Central Procurement Office Policy. This Manual applies to the Central Procurement Office or State Agencies when procuring goods or services. The Chief Procurement Officer may delegate limited purchase authority to State Agencies in accordance with Tenn. Code Ann. § 4-56-101, *et seq*., 12-3-101, *et seq*., the Rules, this Manual or Central Procurement Office Policy. The procedures detailed in this Manual are intended to apply to the usual circumstances a procurement professional will confront in procuring goods and services. Given the unique nature of procurements, procurement professionals should use their discretion in following the guidance contained in this Manual.

1.1. *Procurement Commission*.

This Manual has been approved by the Procurement Commission and supersedes and replaces all previous related procedures. This Manual shall supplement the Tennessee Code, the Rules and Central Procurement Office Policy as the authority for the procurement of goods and services for the State.

1.2. *Edison*.

Except as provided in this Manual, the Central Procurement Office and all State Agencies shall utilize Edison, the State procurement system, for processing all procurement transactions except as provided in this Manual. The Central Procurement Office internet site, www.tn.gov/generalserv/cpo/, may be utilized to access the *Edison Guide to Agency Procurement*. The *Edison Guide to Agency Procurement* is incorporated by reference in this Manual and should be consulted by procurement professionals and solicitation coordinators with respect to the technical aspects of procurement transactions.

2. Scope.

This Manual applies to all procurement transactions of the Central Procurement Office and State Agencies. All procurement professionals or solicitation coordinators of the Central Procurement Office or State Agencies should consult this Manual with respect to all procurements.

3. Ethics and Conflicts of Interest.

3.1. *Ethics and Conflicts of Interest – Generally*

All procurement professionals are expected to follow the Central Procurement Office's *Business Conduct and Ethics Policy and Procedures*, which are incorporated in these Procedures by reference.

3.2. *Responses by State Employees.*

Contracts for goods or services with current State employees or State employees who have separated from State employment for less than six months are prohibited . The Central Procurement Office will verify with the Department of Finance and Administration and Department of Human Resources State employment databases that all potential respondents and their officers are in compliance with Tenn. Code Ann. § 12-4-103, "State Officers and Employees, Prohibited Transactions." If a potential violation is identified, the Central Procurement Office will send written notification to the employing agency to confirm and address the potential violation. The State Agency will prepare a findings report and submit it to the Central Procurement Office.

4. Definitions, Abbreviations and Codes.

4.1. *Definitions*.

As used in this Manual, unless the context otherwise requires:

"Advisory Council" means the council created and empowered by Tenn. Code Ann. § 4-56-106.

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

"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.

"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.

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

“Award” means a State Agency’s notice to a respondent of the acceptance of a response.

“Base Contract” means the original contract prior to any amendments.

“Bid” means a response by a vendor to an invitation to bid.

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

“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.

“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.

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

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

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

“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.

“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.

“Contract Amendment” means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

“Contract Approval” means the procedures a State Agency must follow to obtain final approval of a contract.

“Contract Management Plan” means a State Agency’s approved plan for managing its contracts.

“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.

“Cooperative Purchasing Agreement” means a written contract procured for the benefit of two or more governmental entities to make purchases of goods or services.

“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.

“Debarment” means excluding a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, as specified by the Chief Procurement Officer.

“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.

“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.

“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.

“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.

"Department of General Services" means the State department created and empowered by Tenn. Code Ann. §§ 4-3-1101, *et seq*.

"Edison" means the enterprise management system of the State through which all procurement transactions are conducted.

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

"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.

"Evaluation Committee" means the committee comprised of persons who will evaluate responses to a RFP, RFI or RFQ. All persons serving on an evaluation committee shall be state employees.

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

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

- Capacity of the donor to make the gift;
- Intention of the donor to make the gift;
- Completed delivery of the gift to or for the State, and
- Acceptance of the gift by the State.

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

"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.

"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.

“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.

“Grantee” or “Grant Recipient” means the person or entity awarded a grant.

“Grantor State Agency” means a State Agency that awards a grant to a person or entity.

“Immediate Family” – means a Central Procurement Office or procuring State Agency employee’s spouse, parent, sibling, or child.

“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.

“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.

“Invitation to Bid” means a procurement method where a contract is awarded to one or more bidders based on the lowest responsive and responsible price.

“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.

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

“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.

“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.

“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.

“Performance Bond” means a surety bond issued by an insurance company or bank to secure a Contracting Party’s performance of a contract.

"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 services, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

“Procurement Commission” means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.

“Procurement Professional” means an employee of the Central Procurement Office or a State Agency who has a meaningful role in the procurement of goods or services. By way of example only, a procurement professional may include a contract administrator, a solicitation coordinator or a market analyst.

“Procuring Agency” means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

“Pro Forma Contract” means the form of contract that is attached to a solicitation that each awarded respondent is required to sign, absent negotiation as set forth in the solicitation.

“Proposal” means a proposer’s response to a Central Procurement Office’s or Delegated State Agency’s solicitation for goods or services.

“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.

"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.

“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.

“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.

“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.

“Protest Committee” means the committee created and empowered under Tenn. Code Ann. § 4-56-103.

“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.

“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.

“Request for Proposals” means a written solicitation for written proposals to provide goods or services to the State.

“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.

“Respondent” means a person providing a written response to a solicitation.

“Response” means a respondent’s written response to a solicitation.

“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.

“Responsive Proposer” means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.

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

“Review Process” means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

“Rule Exception” means a request to relax the strict application of certain requirements of these Rules or applicable statutes as allowed by applicable law.

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

"Services" means all services and agreements procured by the State and formalized by contract.

“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.

“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.

“Solicitation Coordinator” means the procurement professionals within the Central Procurement Office or State Agencies who act as the primary points of contact and manage the procurement. Only those State Agency procurement professionals who have gone through training and certification by the Central Procurement Office may act as a solicitation coordinator.

“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.

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

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

“State Architect” means the person, who oversees the Office of the State Architect.

“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.

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

“Supplier” means a person or legal entity identified in Edison who has the legal capacity to enter into contracts and sue and be sued who supplies goods or services to the State through a contract or a purchase order. A “supplier” includes all persons or legal entities referenced as “vendors” in this Manual.

“Suspension” means a temporary or limited exclusion of a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, pending completion of a State investigation or administrative or judicial proceedings, as specified by the Chief Procurement Officer.

“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.

“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.

4.2. *Abbreviations*.

Standard Purchasing abbreviations used in Edison for units of measurement are the ANSI Standard Units of measure and a listing may be found on the Central Procurement Office Internet web site at www.tennessee.gov/generalserv/cpo/.

4.3. *Identification Codes*.

The National Institute of Government Purchasing (NIGP) codes are the standard item codes utilized in Edison. NIGP codes are viewable in Edison and on the Central Procurement Office website. Any item that is on a contract or is an asset must have an Edison Item ID. If an item does not have an Edison Item ID, it can be requested from the Central Procurement Office Content Group.

5. Procurement Process.

Procurement is a systematic process of obtaining goods and services with pricing and on terms and conditions in the State's best interests. Competition should be involved in the procurement process to the maximum extent practicable, with the caveat that a non-competitive process (e.g., informal solicitations, emergency purchases, sole source, etc.) is sometimes necessary under the circumstances. The procedures set forth in this section shall apply to all procurements of goods or services, irrespective of procurement method involved. The foregoing notwithstanding, procurement professionals should use sound judgment in following the guidance contained in this Manual as not every procedure will fit every circumstance a procurement professional faces in procuring goods or services.

5.1. *Procurement Personnel*.

Procurement personnel responsible for procuring the State's goods and services include the Chief Procurement Officer and all persons acting on behalf of the Chief Procurement Officer, whether such persons are located in the Central Procurement Office, within a State Agency or under a Delegated Authority.

5.2. *Procurement Methods – Generally*.

The procurement methods to be used by the Central Procurement Office or a Delegated State Agency include the following:

- *Informal Solicitations.*

- *Invitation to Bid (ITB).*
- *Request for Proposals (RFP).*
- *Emergency Purchases.*
- *Competitive Negotiation.*
- *Sole Source.*
- *Reverse Auction.*
- *Request for Information (RFI).*
- *Request for Qualifications (RFQ).*

The specific policies, procedures and rules concerning each of the procurement methods can be found in the Rules and in the Central Procurement Offices' *Procurement Methods Policy and Procedures.*

5.3. *Scope of Work and Specifications*.

5.3.1. Scope of Work.

The scope of work is a very important part of the procurement process as it forms the basic framework for the resulting contract. The solicitation coordinator is primarily responsible, in consultation with, by way of example only, experts, end users, or State Agency stakeholders, for managing the drafting of the scope of work. The scope of work is a detailed description of what is required of the contracting party to satisfactorily perform what is required under the contract. The success or failure of a procurement and the resulting contract can usually be linked to the adequacy of the planning, analysis and thoroughness of the scope of work. The time spent planning, analyzing, and drafting the scope of work will result in saving time, resources, money and will improve the quality of the goods or services procured by the State or State Agencies. It is very important that the scope of work achieve the following:

- Secure the best economic advantage to the State;
- Be clearly defined;

- Be contractually sound;
- Be unbiased and non-prejudicial toward respondents;
- Encourage innovative solutions to the requirements described, if appropriate; and
- Allow for free and open competition to the maximum extent reasonably practicable under the circumstances.

5.3.2. Specifications - Generally.

The term “specifications” is generally used to describe the specifications of the State’s needs. State Agencies shall recommend to the Chief Procurement Officer specifications for all goods or services needed by a State Agency irrespective of whether the contract is a Statewide Contract or an Agency Term Contract. Specifications shall be functional or performance specifications, when practicable, and must be clear, unambiguous and written to promote open and fair competition.

With respect to goods, all brand and model numbers used, must be those in current production, and available in the market. The usage of brand and model names alone will not be permitted as a substitute for performance or functional specifications, unless providing performance or functional specifications is impracticable. When an item is specified by the use of brand names, the words "or equal" should be included.

State Agency recommended specifications may be approved as stated or modified by the Central Procurement Office to enhance competition. Changes to agency minimum specifications should be approved by the Central Procurement Office after consultation with the requisitioning agency.

5.3.2.1. Descriptive Format.

A descriptive format consists of a conventional listing or paragraph text description of specification data. Recommended specifications in a descriptive format should, if practicable:

- With respect to goods, identify the product using general terminology in the description (reference following Example);

- List the characteristics that determine performance capability and identify those characteristics that are essential in order to meet performance requirements;

- With respect to goods, list the minimum or maximum acceptable performance requirements for each characteristic with as much tolerance and flexibility as practicable. Unnecessary characteristics or performance requirements may limit competition; and

- With respect to goods, identify two (2) or more items by manufacturer, brand or item number that will meet the minimum performance requirements.

<u>EXAMPLE</u>

a) Identity…….....Sander/Grinder
b) Characteristics.…….…….……...…Hand Held
c) Type Performance.....electric
d) Amps at 120V.....5.5
e) Sanding/Grinding Wheel.....4 1/2 inch
f) RPM.....10,000
g) Arbor & Flange.....7/8 inch
h) Spindle.....5/8 inch
i) Side Handle.....Reversible
j) Bearings.....Ball & Needle
k) UL Listed.....Yes
l) Brand(s)/Model(s) or equal: Black & Decker Model 2750 or Milwaukee Model 6145

5.3.3. Standard Specifications by Description.

The Central Procurement Office shall review all recommended specifications and develop and adopt standard specifications for any good or service that shall, insofar as practicable, fit the requirements of the majority of all State Agencies who utilize the same good or service.

5.3.4. Standard Specifications by Type.

The State utilizes different specification types to procure goods or services.

5.3.5. Specifications Based on Standard State Specifications.

Items must equal or exceed the specifications listed. The absence of detailed specifications or the omission of detailed descriptions shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used.

5.3.6. Specifications Based on Catalogs, Price List, or Price Schedules.

Responses are obtained requesting a plus (+) percentage (%), minus (-) percentage (%), or net cost offered as a discount or surcharge applying to the goods listed in the catalog, price list, or price schedule described within the solicitation. A single percentage for each catalog or price list is required, unless otherwise authorized by the Central Procurement Office.

5.3.7. Specifications Based on Qualified Goods List.

Specifications may include a list of brands and model numbers that meet the requirements. Goods which have been analytically tested and meet specifications receive Qualified Products List (QPL) approval.

5.3.8. Specifications Based on Brand Name.

Reference to brand names, trade names, model numbers, or other descriptions peculiar to specific brand goods, is made to establish a required level of quality and functional capabilities. It is not intended to exclude other goods of comparable quality or functionality. Comparable goods of other manufacturers will be considered if proof of comparability is contained in the response.

5.3.9. Exceptions to Standard Specifications.

The Chief Procurement Officer shall make use of standard specifications when practicable. Goods and services purchased without standard specifications shall be made in accordance with rules or policies approved by the Procurement Commission.

5.3.10. Exemptions to Standard Specifications.

The Commissioner of General Services or the Commissioner's designee may designate certain materials, supplies, and equipment which are standard in manufacture and competitive in design, that may be purchased without standard specifications.

5.3.11. Life Cycle Costing.

It is State policy to use the life cycle costs of goods, as developed and disseminated by the federal government, when feasible for State procurements. Where federal energy efficiency standards are established, life cycle costs shall be adopted by the Procurement Commission and used by the Central Procurement Office in the contracting for major energy-consuming goods.

5.3.12. Considerations in Determining Life Cycle Costs.

In determining life cycle costs, the Procurement Commission and the Central Procurement Office may consider the cost of the good, the energy consumption, maintenance costs, the cost of upgrades over the life of the item the projected energy cost of energy over the useful life of the good, and the anticipated resale or salvage value of the product.

5.3.13. Energy Efficiency Standards.

Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that has established energy efficiency standards utilized by the federal government in its contracting for major energy-consuming goods. Pursuant to Executive Order 59, agencies shall use energy efficiency standards prescribed by Energy Star for the purchase of energy consuming goods. The Energy Star website, http://www.energystar.gov/, provides a qualified list of goods meeting Energy Star's minimum energy specifications, life cycle costing calculations, life cycle cost formula information, and qualified goods that meet Energy Star's rating for using less energy and helping to protect the environment. Currently, the Energy Star rating can be found on goods in more than 35 goods categories. Goods listed on the Energy Star website's list of qualified goods will be used as "acceptable brands and models" on response documents. The minimal energy specifications for goods listed on the Energy Star Qualified Goods list must be included in the line item specifications on all response documents for the purchase of major energy consuming goods.

5.3.14. Product Testing and Demonstration.

Vendors often offer demonstrations of their goods to agency level users. Agencies are required to provide prior written notification of goods testing to the Sourcing Analyst or Category Specialist.

5.3.15. Agency Suggested Vendors.

In an effort to ensure the maximum amount of competition on a given procurement and to ensure that the best available vendors are notified of the State's need for goods or service, State Agencies are encouraged to suggest vendors to be included on a specific solicitation list.

5.4. *Drafting the Solicitation*.

After the appropriate procurement method has been determined, the Central Procurement Office or a State Agency should prepare a solicitation document that meets the needs of the State or the State Agency at issue. The procurement method selected for a given procurement should be in accordance with the Central Procurement Office's *Procurement Methods Policy and Procedures* and *Non-Competitive Procurement Policy and Procedures*. The public policy of the State is that the procurement of goods or services shall, whenever practicable, be accomplished through a competitive solicitation. In preparing the solicitation document, the solicitation coordinator shall review the relevant statutes, the Rules and Central Procurement Office Policy to identify each of the statutory, regulatory or policy and procedural requirements or considerations necessary to comply with applicable law before drafting a solicitation document. Solicitation coordinators involved in preparing a solicitation should have on file or sign and submit a conflict of interest and disclosure statement prior to beginning work on a solicitation. (See *Business Conduct and Ethics Policy and Procedures*, *Attachments A and B*).

5.4.1. Planning.

The Contract Management Plan should cover all the different steps in the process with the expected date of initiation of each milestone. When this is the case, the Contract Management Plan merges with the procurement schedule. And, ideally, it should then contemplate all the steps in the process, including contract administration and close-out.

5.4.1.1. Solicitation Event Planning.

Solicitation event planning requires extensive study on the good or service category, market trends, new goods, meetings with vendors. Solicitation coordinators should:

- Establish baseline for the procurement, including running volume reports out of Edison (and analyzing the same) to understand State Agency spend, user State Agencies and vendors.

- Document queries that were run in Edison.

- Identify prospective vendors.

- Gain an understanding of the unique seasonal or market conditions for the procurement at issue.

- Review specifications from previous contracts and speaking with user agencies on what is working well and what is not working well (e.g., revising past specifications when necessary; removing superfluous specifications to reduce respondent confusion or unnecessary conditions, etc.).

- Ask what would make the contract better (e.g., hold a stakeholder meeting).

- Review terms and conditions and make improvements where needed.

- Draft open specifications (e.g., consider finding at least two acceptable brands or models for each line item).

- Complete a spreadsheet to have item numbers assigned to new items and descriptions updated on terms you are keeping.

- Finalize procurement strategy and evaluation criteria:

    - Are any of the items sole source or proprietary?

    - Will the procurement be an “all or nothing” award?

- Does it make sense to group certain items and awards based on grouping factors?

- What terms and conditions are most advantageous for the State (e.g., what is a reasonable number of days for shipping once the vendor receives a purchase order)?

After event approval, the solicitation coordinator should be certain to adjust the end date to a reasonable amount of time for prospective respondents to complete their responses before dispatching.

5.4.1.2. Benchmarking and Estimates of Expected Costs.

Benchmarking and estimating contract costs are core functions of contract procurement. Benchmarking is the process of comparing an item, service or performance between competitors. Estimating contract costs is the process of determining the total cost of contract ownership.
Price analysis and cost analysis are common tools used in benchmarking and estimating costs. Price analysis is a process of comparing proposed price with known indicators of fairness and reasonableness.
Price analysis techniques include:

- Comparing "apples-to-apples" or in other words, the same or similar goods or services at similar units of measure.

- Comparing competitive prices received in response to a solicitation with one another.

- Comparing proposed prices with prices under existing contracts and with prices proposed in the past for the same or similar goods or services. Factor in market changes (e.g., commodity price changes) or other influences (e.g., inflation, raw material costs, and transportation costs).

- Comparing proposed prices with average market prices; competitive price lists such as with other states, cooperative agreements, and federal government prices; similar indices and discount or rebate arrangements.

- Comparing additional discounts offered (e.g., volume purchase discounts, prompt pay discounts).

- Comparing additional costs (e.g., payment term penalties, training, product/process conversions, and subcontractor arrangements).

Cost analysis is used to determine the estimated cost of the contract and whether or not the proposed pricing components as well as the total contract costs are fair and reasonable. It is the primary evaluation method used where price competition is lacking in sole source procurements and to evaluate professional, consulting and service related contracts that are comprised of multiple inter-related components such as the estimated total cost, labor, materials, overhead, and profit.

Cost analysis and estimating cost techniques include:

- Verifying and evaluating the total costs including allowances for contingencies. Proposed costs must be allowable, allocable (logically related to or required when performing the contract), and reasonable.

- Comparing the actual costs of the current contractor for the same product or similar work versus other states, cooperative contracts, or the federal government, using standard units of measure. (e.g., Unit Price x Planned Qty x Time).

- Comparing the actual costs of the same good or service versus other states, cooperative contracts, or the federal government, using standard units of measure. (e.g., Unit Price x Planned Qty x Time).

- Projection of proposed contractor's cost over the contract life (e.g., fixed, price dictated by federal government, through average market selling prices, raw material in short supply).

- Determining the potential effect of the contractor's current practices and incidentals on future costs (e.g., on-time delivery, product/resource shortage, training, cost-overruns).

Estimating costs is the culmination of the information obtained and formulated through price or cost analysis. Benchmarking and estimating contract costs are functions that should be conducted for every

procurement, contract extension, contract renewal or contract change request.

Resources:
State of Indiana, Department of Administration
http://www.in.gov/idoa/2354.htm
State of Georgia, Department of Administrative Services
http://doas.georgia.gov/StateLocal/SPD/Pages/Home.aspx
State of Mississippi, Office of Purchasing
http://www.mississippi.gov/webcontent/partnerSite.html

State of Missouri, Office of Administration
http://oa.mo.gov/purch/
National Association of State Procurement Officials (NASPO)
http://www.naspo.org/
State of Oklahoma, Central Purchasing Division
http://ok.gov/DCS/Central_Purchasing/index.html
State of Pennsylvania, Department of General Services
http://www.portal.state.pa.us/portal/server.pt/community/procurement/1271
State of Virginia, Procurement
http://www.eva.virginia.gov/buyers/index.htm
State of Wisconsin, Department of Public Instruction
http://sped.dpi.wi.gov/files/sped/pdf/grt-disc-procurement-guide-cost-price.pdf

5.4.1.3. Target Pricing.

Only the Central Procurement Office is authorized to use negotiation techniques. For example, the solicitation coordinator may review pricing from the previous contracts, if applicable, or benchmark pricing from other state contracts. The solicitation coordinator should make "apples-to-apples" comparisons with respect to contract terms and conditions, whenever possible to ensure that target price analysis roughly approximates pricing that contemplates the "principle of substitution." Industry standards should also be considered for establishing target pricing when available. The principle of substitution holds that a rational, informed buyer will only acquire a good or service at its lowest price in the market place provided that "substitutes" (e.g., similar quality, quantity or functionality) are available. Consistent with the principle of substitution, target pricing is a form of price negotiation that helps to

ensure that the State is receiving the best value or the most cost-effective goods or services. Target price negotiations should be conducted in accordance with the Central Procurement Office's *Negotiations Policy*.

5.4.2. Identifying Prospective Respondents.

The State maintains a database that contains contact information for thousands of registered suppliers and current and former suppliers. The supplier database is the first place that a solicitation coordinator should consult when attempting to identify prospective respondents. There are circumstances where a solicitation coordinator is unable to identify qualified suppliers through the supplier database (e.g., because of the unique goods or services at issue, proprietary rights of parties, etc.). In such an event, a solicitation coordinator should perform due diligence or research to identify potential vendors, particularly if the good or service has not been purchased before, involves new technology or proprietary rights. While not an exhaustive list, a solicitation coordinator should consult the following:

- Library and web references such as the Thomas Register. For procurement related websites see Helpful and Interesting Web Sites.

- The Yellow Pages for local suppliers directories, vendor catalogues, and professional journals.

- Trade associations or publications.

- Procurement organizations in other states (e.g., state, local government, higher education, LEA's, etc.).

- Cooperative procurement organizations (e.g., WSCA, NASPO, MMCAP, etc.).

- Existing suppliers in Tennessee or other states who provide the same or similar services to those being procured.

5.4.3. Standard Terms and Conditions - Solicitations.

The Central Procurement Office shall prescribe the standard terms and conditions to be used in all solicitations in accordance with the Rules or Central Procurement

Office Policy. Changes to the standard terms and conditions may require additional State approvals in accordance with Section *5.15.3.* of this Manual.

5.4.4. Special Terms and Conditions - Solicitations.

The Central Procurement Office, in consultation with the affected State Agency, shall prescribe all special terms and conditions to be used in a solicitation in accordance with the Rules or Central Procurement Office Policy. Changes to the special terms and conditions may require additional State approvals in accordance with *Section 5.15.3.* of this Manual.

5.4.5. Evaluation Criteria.

Evaluation criteria (and the weighting to be applied to each criterion) shall be specified in solicitations (except ITBs) and made available to all prospective respondents. The solicitation coordinator should tailor the evaluation criteria to the particular project and contract terms to achieve the best possible response in terms of value for money. While not an exhaustive list, criteria that should be evaluated include qualifications, experience, technical approach, and cost in the evaluation of responses.

The response evaluation process (except ITBs) should be designed to award a contract on terms and conditions in the State's best interests and not necessarily to the respondent offering the lowest cost. The evaluation criteria should be designed to weight the relative importance of each criterion in a manner that corresponds to the importance to the State of each criterion. For example, if a respondent's technical approach is more valuable to the State than a respondent's experience, the evaluation criteria should be weighted to give greater importance or emphasis to the technical approach criterion.

5.4.6. Requisitions for Purchase.

To request procurement action by the Central Procurement Office, a Requisition for Purchase is required. Please note that a Requisition for Purchase may be required in other contexts, e.g., when buying from a Statewide Contract. A Requisition for Purchase is used in the following purchase techniques, by way of example only:

- A requisition for purchase may be used by a State Agency to request the Central Procurement Office to procure a given good or service needed by the State Agency.

- A requisition to establish a Delegated Purchase Authority may be used to request a delegation of direct purchase authority to a State Agency to purchase specific goods or services for certain dollar amounts utilizing approved procurement methods.

- All requisitions for purchase require quantity, description and costs. One-time purchases require the specific quantity to be purchased and detailed item descriptions. Agency Term Contracts with direct purchase authority and Delegated Purchase Authority must state the goods or services to be procured, the term of the contract, the estimated usage and dollar amounts. When requested by the Central Procurement Office, a State Agency shall provide information and statistics to support or clarify estimates for purchases and to verify use of goods or services by the State Agency. All requests for Delegated Purchase Authority require a written explanation or justification of the request and prior approval of the Chief Procurement Officer.

All Delegated Purchase Authority procurements should be conducted in accordance with the Central Procurement Office's *Policy and Procedures* on *Procurement Methods* and *Policy and Procedures on Delegated Authorities*.

5.5. *Solicitation Event Creation*.

Once the procurement planning phase has been completed, the solicitation coordinator is able to create an event in Edison. With respect to Edison, the initial event is called an RFI, or request for information. This is different than the RFI procurement method of the same name. The solicitation coordinator will prepare the terms and conditions and solicitation factors for the event. Each of the solicitation factors terms and conditions may be selected from within Edison or other common drives during the event creation process. Solicitation factors are questions that the respondent must answer with regard to the solicitation. The terms and conditions contain not only a list of pre-specified terms that are to be contained in all responses, but also contain special terms and conditions that the solicitation coordinator has identified that are tailored to the specific good or service involved in the solicitation. Please note that RFPs, RFQs and RFIs are prepared outside of Edison. Solicitation coordinators should utilize the RFP template when creating an RFP event.

5.5.1. Terms and Conditions and Instructions.

The terms and conditions should be added as attachments to the solicitation event in addition to instructions on how to register as a respondent/vendor/eSupplier or how to submit a response to a solicitation online.

5.5.2. Event Title.

The event should be appropriately titled and descriptive of the event. For example, SWC 600, Widgets, which identifies the SWC number and the purpose of the procurement. The event name and number should appear in the subject line of the email solicitation.

5.5.3. Date, Time and Location of Event.

Although not mandatory, the solicitation coordinator should identify a date, time and location for the pre-solicitation conference, if applicable. A conference room should be reserved for this meeting and included in the event details. The event description will include the event name, date, time and location of pre-solicitation conference. If there are interested parties who are unable to attend the conference in person, arrangements should be made to allow such persons to attend telephonically. The following template must be described, completed and copied into the event description field, e.g.:

- This event is a Request for Information (RFI) to establish a (insert length and type of contract, i.e. agency term or statewide contract and include brief description of contract type).

5.5.4. Target Start Date.

The solicitation coordinator should also establish a target start of contract period and insert the proposed dates of the contract in Edison. Please note that a contract start date cannot occur earlier than the date on which all party approvals have been obtained. Target start dates should contemplate the lag time needed for approvals. The solicitation coordinator should manage all contract beginning and expiration dates to avoid lapses in contract coverage (i.e., the period between when one contract ends and before the replacing contract begins, when one contract ends and the extension or renewal becomes effective, etc.) as these lapses compromise the State's legal rights and remedies, e.g., in the event of contract breach of *force majeure*.

5.5.5. Pre-response Conference.

The solicitation coordinator should conduct a pre-response conference with all prospective respondents to clarify the solicitation. These are commonly referred to as a "pre-bid" or "pre-proposal" conference, but are collectively referred as a "pre-response" conference to more universally apply to all solicitations.
The solicitation coordinator should have an agenda of all the items he or she would like to cover at the pre-response conference. The time of the pre-response conference with respondents should contemplate a prospective respondent's travel time to the place of the conference. The solicitation coordinator should encourage prospective respondents to bring all pertinent solicitation documents to the pre-response conference. The solicitation coordinator should place all pertinent solicitation documents (e.g., specifications, terms and conditions, line item list, factors, etc.) in an appropriate file or format for easy access during the pre-response conference. The solicitation coordinator should be in a position to make necessary changes to any pertinent solicitation documents as a result of the pre-response conference.

The pre-response conference notification should include the following information:

- Pre-response Conference Date: (Insert date).
- Time: (Insert time, including time zone and duration of the event).
- Location.
  - e.g., William R Snodgrass/TN Tower, 3rd Floor, Central Procurement Office, Morrow Conference Room, etc.
- Purpose for Conference.

5.6. *Communication with Respondents.*

Clear, concise and consistent communication while the solicitation has been introduced into the market place is essential for a harmonious, fair and transparent procurement. A solicitation coordinator should avoid even the appearance of favoritism towards a given respondent. Each solicitation should identify the solicitation coordinator who will act as the point of contact for the State. Communication should be reduced to writing, but may

be orally given to prospective respondents, provided the oral communication is reduced to writing and provided to all prospective respondents. No solicitation may be modified or amended orally by a solicitation coordinator. Unless a communication with respondents is reduced to writing, no communication shall be deemed to be the official communication of the Central Procurement Office or the Chief Procurement Officer.

5.7. *Question and Answer.*

After all pre-response agenda items have been covered, the solicitation coordinator should allow for a brief written question and answer period after the pre-response conference and share all questions and answers with all known prospective respondents. If it is an event created in Edison, the solicitation coordinator should create the RFx event and copy over information from the Edison RFI which will bring over the entire response list and factors. The solicitation coordinator should be sure to update any information, including additional potential respondents, from changes made at the pre-response conference. The solicitation coordinator has the option of building the RFx event from scratch using the updated documents from the pre-response conference.

5.8. *Analyzing Responses and Oral Presentations.*

5.8.1. Technical Responses.

After the response closing date, the evaluation committee, if one has been formed, or the solicitation coordinator, if an evaluation committee has not been formed, should perform a response analysis and determine the highest rated respondent (e.g., with respect to a RFP) or the lowest responsive and responsible proposer (i.e., with respect to an ITB). The solicitation coordinator should maintain all documentation related to responses in an appropriate file or format.

The solicitation coordinator should compare the low responses for each line to the benchmark data the solicitation coordinator collected while the event was out for solicitation. The solicitation coordinator should look at the range in pricing received and take into account estimated volumes to help determine what the solicitation target pricing should be.

If target price negotiation is utilized, the solicitation coordinator should prepare documentation that details the methodology used to arrive at the solicitation's target pricing.

5.8.2. Tabulating Pricing or Analyzing the Cost Proposal.

After the target price round, the solicitation coordinator or other procurement professionals should enter all modified responses received into Edison with respect to ITBs and documented in the Edison file with respect to all other procurement methods. The solicitation coordinator should evaluate the new responses received to determine the low respondent for each line item or group and determine the respondent who will be recommended for award with respect to ITBs. Additional steps may include additional negotiation rounds. The solicitation coordinator should follow § 5.11.2. of this Manual.

5.9. *Vendor References.*

Vendor reference checking is an essential part of a solicitation coordinator's duties and responsibilities. Through reference checking, a solicitation coordinator will be able to determine if the vendor is:

- Honest and trustworthy.
- Reliable.
- Competitively priced.
- Customer focused.
- Supportive.

Former clients of vendors are more likely to be more honest about their relationship with the vendor. The solicitation coordinator should start the questions on a general level before proceeding to more specific questions concerning the goods or services at issue in the event. The solicitation coordinator should obtain as much detail as practicable given the solicitation at issue. Some key performance areas of inquiry include:

- Questions concerning the vendor's relationship with the reference;
- A description of how the vendor was selected (e.g., through competitive process, non-competitive process, etc.)
- Whether other vendors were under consideration and if so which vendors;

- A brief description of the evaluation and elimination process that selected the vendor at issue;
- The scope of work of the contract awarded to the vendor;
- Whether the vendor performed in accordance with the contract's scope of work;
- Whether there were any problems encountered with the vendor;
- Whether there were any limitations on vendor performance;
- Specifics as to what the vendor did well under the contract;
- Whether the vendor was easy to work with and how the vendor responded to the needs of the reference;
- Whether the goods or services were performed in accordance with the contract;
- Whether there are any results that have been realized from using the goods or services provided by the reference;
- With respect to goods, whether the goods are easy to use or require education and training to properly use;
- Whether there are things the reference would do differently if the reference was to re-procure the goods or services at issue;
- Whether the choice of the vendor was cost effective;
- Whether the reference would recommend the vendor to other prospective references;
- Whether the reference has other advice not covered by any of the foregoing areas of inquiry.

If training is involved, the solicitation coordinator may want to consider these areas of inquiry as well:

- Whether the vendor provides the training or subcontracts the training;
- Whether the trainer was properly qualified (e.g., through training, education, licensing or certification) to do the training;
- Whether the trainer was knowledgeable about the good or service at issue;
- Whether the training provided was sufficient;
- The length of time it took for an individual to become proficient;
- Whether additional indirect costs are involved the price of the good or service at issue.

If a prospective respondent has listed in his or her response similar state contracts to demonstrate experience or expertise, depending on the sensitivity and importance of the contract to be awarded, the solicitation coordinator should review each of the contracts identified by the respondent to ensure that the respondent's representations of experience are accurate.

5.10. *Evaluation Committee.*

The number of evaluation committee members of a solicitation may vary but should consist of at least three (3) members, each of whom should have the technical expertise in terms of education, training and experience to aid the evaluation committee with respect to the technical aspects of the solicitation. If necessary, the solicitation coordinator should seek out State employees or consultants who can attend presentations and provide meaningful technical expertise to evaluation committee members. Only state employees may serve as evaluation committee members, but non-state employees with technical expertise that is helpful to the evaluation committee should be included as consulting, *ex officio* or non-voting members. Before the commencement of the evaluation process, the evaluation committee should review and familiarize themselves with the solicitation, applicable statutes, rules and regulations, Central Procurement Office Policy and this *Manual*. All Evaluation Committee members should understand the general solicitation requirements and the specific requirements of the subject solicitation. Only Evaluation committee members are permitted to score responses.

No individual involved in evaluating a solicitation or the associated scope of service should have a financial interest in a prospective respondent or have the appearance of a

conflict of interest with regard to the solicitation or prospective respondent. Ensuring the independence of each person involved in the evaluation of responses is the solicitation coordinator's responsibility. The solicitation coordinator should follow the Central Procurement Office's *Business Conduct and Ethics Policy and Procedures*, which are incorporated in these Procedures by reference. *Appendixes A and B* to the *Business Conduct and Ethics Policy and Procedures* contains all necessary conflict of interest disclosure forms for evaluation committee members.

5.11. *Evaluation of Responses.*

Evaluation committee members should be provided with copies of each solicitation before beginning their individual review of the responses.

5.11.1. *Review all Responses.*

Evaluation committee members should take notes, make comments, or prepare questions for discussion during oral presentations or any meetings with other evaluation committee members. It is not necessary for the evaluation committee member to score the responses at this point.

5.11.2. *Determine status – Responsiveness and Responsibility.*

The solicitation coordinator, in consult with the evaluation committee if applicable, should determine whether each response is "responsive" or "non-responsive." A response that is "responsive" is one that conforms in all material respects to the solicitation and meets all mandatory requirements. A response may be deemed "non-responsive" if any of the required information is not provided, the submitted price is found to be excessive or inadequate as measured by criteria stated in the solicitation, or the response is clearly not within the scope of work or specifications described and required in the solicitation. The solicitation coordinator should exercise extreme care when making this determination because of the time and cost that a potential respondent has put into submitting a response and the fact that competition strengthens the results of a given procurement.

Responses capable of being determined responsive through clarification should not be deemed non-responsive. If a response is determined to be "non-responsive," the solicitation coordinator should document the justification for this determination. If a response fails to address one or more solicitation mandatory requirements or respond to them incompletely, the response should not be

evaluated unless these areas can be clarified by the respondent. Documentation of any decision to bypass or determine a response "non-responsive" should be included in the procurement file. All respondents are deemed to know all facts documented in the State's procurement files on the first day of the open file period.

5.11.3. Scoring Technical Responses.

The evaluation committee should evaluate the responses and rank them based on the evaluation and weighting criteria contained in the solicitation. A good practice is for each committee member to initially or informally score responses independently from the other members. Responses must be evaluated solely on the stated criteria listed in the solicitation. An evaluation committee member's prior experience with the respondent or the good or service at issue cannot be considered in scoring the responses. The solicitation coordinator should use an evaluation criteria form, which will reduce subjectivity, and ensure that each member of the evaluation committee applies reasonably consistent and bias-free analysis to each response with respect to all other responses. Point assignments should be determined prior to the receipt of responses and will be made available in the evaluation criteria form.

5.11.4. Evaluation Committee Meetings.

Once the responses have been evaluated and scored by individual evaluation committee members, the full evaluation committee may meet to discuss the responses and arrive at the final scoring. Only Evaluation Committee members who are present in person or electronically during oral presentations may participate in scoring responses. The full Evaluation Committee should discuss all aspects of the responses so that there is a "unified understanding" of the criteria and corresponding responses. Only an individual Evaluation Committee member may adjust his or her individual score at this point. Respondent scoring should be based on the written responses and respondents' oral presentations. For example, ambiguous or unclear information provided in a response or during oral presentations or incapable of being clarified after attempts by the solicitation coordinator at seeking clarifications should be downgraded accordingly.

5.11.5. Clarification.

If the evaluation committee is unsure of certain items or issues included in a solicitation response, or needs clarification of a response, it may, at any time, request further clarification from the respondent through the solicitation

coordinator. The solicitation coordinator will distribute the clarification questions to the respondent. Responses will be returned to the solicitation coordinator and disseminated to the evaluation committee as appropriate. Solicitation coordinators should consult the Central Procurement Office's *Policy and Procedures on Negotiations* or appropriate legal counsel where the solicitation coordinator is uncertain whether a response can be clarified and to what extent.

5.11.6. Oral Presentations.

Oral presentations are not a mandatory requirement of a solicitation evaluation. If an oral presentation is deemed necessary, in the sole discretion of the solicitations coordinator, the solicitation coordinator shall include within the solicitation's schedule of events a date for oral presentations. The oral presentation is an opportunity for respondents to explain and clarify their responses. If an oral presentation is mandatory, it must be stated in the solicitation, as amended. Oral presentations must not allow respondents to materially alter the respondent's response, the requirements of the solicitation, the specifications, or the proposed scope of work.

The oral presentation typically highlights the added value, competitive advantage and unique ability each respondent can provide to deliver a good or service that meets the requirements of the solicitation. The presentation should include a demonstration that substantiates the approach, method, functionality, determination and cost effectiveness of the response. Although not mandatory, oral presentations are a valuable way to:

- Further assess a respondent's ability to deliver the proposed good or service that may not have been presented accurately or precisely in the written response;

- Provide a discussion and visual demonstration of the solution the respondent is proposing that could not be effectively conveyed or measured in writing due to its subjective content;

- Provide an additional method of evaluation of the responses offered by the highest scoring respondents to further differentiate them from other respondents, especially where the evaluation of the written responses is too close to make a clear award decision.

- Evaluate the respondent's proposed key personnel who will be primarily responsible for performing the contract awarded pursuant to the procurement.

Oral presentations typically focus on the business aspects of the response that require clarification as well as provide a technical solution overview. The presentation should allow the respondent to demonstrate to the evaluation committee the concept, basic functionality, usability and effectiveness of the respondent's good or service. Detailed aspects such as integration, scheduling, etc., should be held at a separate Statement of Work (SOW) meeting. Non-voting or *ex officio* members providing technical advice and counsel to the evaluation committee should attend each oral presentation and ask questions as appropriate. All pertinent dialogue between evaluation committee members, technical advisers and respondents shall be reduced to writing to memorialize the presentations. These written memorializing of presentations shall aid the evaluation committee in scoring responses.

5.11.7. Scoring Cost Proposals.

The cost proposal should be retained by the solicitation coordinator and kept confidential from the evaluation committee and other respondents until the technical evaluation is completed. The reason for this requirement is to prevent the evaluation committee from being unduly influenced by the cost proposals when evaluating the technical responses. The solicitation coordinator will review the evaluation committee's technical scoring and justification for compliance to the solicitation. The solicitation coordinator will then open and provide the cost proposals to the evaluation committee for review and determination so that an "apple-to-apple" comparison can be made. The solicitation coordinator or the procurement professional assisting with cost proposal analysis and evaluation should take steps to ensure that there are no hidden or undisclosed costs associated with a response in the event of contract award. Cost proposals are scored according to the solicitation evaluation criteria, and the cost score will be added to the technical score to determine the award. There are circumstances where it may become necessary for the solicitation coordinator to review, analyze and tabulate the cost proposal of respondents contemporaneously with the evaluation of the technical responses. In such an event, the Central Procurement Office shall erect a "Chinese Wall" and maintain strict confidentiality between the procurement professionals or the evaluation committee members analyzing and evaluating the technical responses and those procurement professionals analyzing and evaluating the cost proposals.

5.12. *Negotiation*.

Each solicitation should include provisions governing negotiation with one or more respondents. Pre-award negotiations may be conducted with respondents who are within the competitive range. Negotiations should be conducted in a manner that is fair to the respondent or respondents selected for further negotiation. Negotiation rounds, including by way of example only, an initial round of target price negotiation, additional rounds of negotiation, culminating in a BAFO round of negotiation, may be had if it is beneficial to the State. Only the Central Procurement Office may engage in target price, additional rounds of negotiation, or BAFO negotiations. Neither target price, additional rounds of negotiation, nor BAFO responses can be requested until after responses are evaluated. Once target pricing, additional rounds of negotiation, or BAFO responses are received, with respect to a RFP or other solicitation method involving an evaluation committee, the evaluation committee should evaluate it in the same manner as the original response criteria. With respect to an ITB or other solicitation method not involving an evaluation committee, the solicitation coordinator is responsible for analyzing and tabulating all target pricing, additional negotiation responses, or BAFO responses.

Negotiations may be conducted with a select group of respondents based on an established competitive range or with just the apparent awarded respondent. The solicitation coordinator may conduct multiple negotiation rounds if doing so is in the State's best interests. There is no minimum number of negotiation rounds and there are no limitations to how many rounds of negotiations must be conducted.

If the State exercises its right to enter into negotiations, it may identify areas of a proposal that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents or selected competitive range respondents will be given equivalent information with respect to cost negotiations. By their very nature, single respondent negotiations will not involve making all information as part of the negotiation available to other respondents who were not selected for further negotiation.

All cost negotiations will be documented for the procurement file. Additionally, the solicitation coordinator should conduct target pricing and other price or service level pricing, market considerations, benchmarks, budget availability, industry standards or other method that does not reveal individual respondent pricing. During negotiations rounds, respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual Proposer.

5.12.1. Competitive Range.

Given the number of responses and the broad range of competitiveness of responses, it may not be practicable to engage in negotiations with each and every respondent. In the event of multiple responses and the State's needs for negotiating a contract on terms and conditions in the State's best interests, it may be necessary to shorten the list of respondents to a "competitive range" and only negotiate with one or more respondents within the competitive range. The competitive range should be established based on the following guiding principles:

- Price.
- Cost of Ownership.
- Responses that appear to provide the best value based on:
    - Evaluation criteria in the solicitation
    - Product specifications
    - Information provided by the vendors
- Responses most likely to provide greater value after negotiations based on the same criteria.
- Respondent scores.

The solicitation coordinator, in conjunction with the requesting agency as appropriate, may wish to consider establishing in the solicitation a minimum score that a respondent must achieve before the respondent will be considered in the competitive range and thus eligible for additional negotiation.

5.12.1.1. Negotiation with Single Respondent versus Multi-party Negotiation.

Factors a solicitation coordinator should consider when electing to negotiate with just the highest evaluated respondent instead of engaging in multi-party negotiations include:

- The expected dollar value of the award and length of contract.

- The complexity of the acquisition and the variety and complexity of offered solutions, in terms of impact on the likely breadth and depth of the discussions.

- The resources available to conduct discussions vs. the expected variable administrative costs of discussions.

- The impact on lead-time for award vs. the need for timely delivery.

- The extent to which discussions with additional respondents would likely provide diminishing returns.

- The disparity in pricing between the lowest priced respondent and the other respondents, with respect to an ITB.

- The disparity in pricing between the highest rated respondent and the other respondents, with respect to all other solicitation methods.

5.12.2. Target Price Negotiations.

Target pricing gives responsive and responsible respondents an opportunity to improve upon their responses by offering more competitive pricing. Proposers are not obligated to meet or beat target prices but will not be allowed to increase overall prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in the proposal improvement and does not reveal individual respondent pricing.

The target price is reached by considering factors such as the current/last contract price paid for an item, benchmarks, , industry standards, budgets, raw materials that influence the pricing of the product, or market trends.

Once the initial responses have been received, the solicitation coordinator should:

- Determine the lowest proposed cost for each line item as applicable..

- Compare the lowest proposed cost for each line item against current/past contract price and other benchmarks.

- Determine a unique target %, as opposed to a flat % off, for the least cost supplier that will guide proposer pricing towards the ideal purchase price.

- Calculate the target price for each line item in a spreadsheet.
- Evaluate whether or not there is a price reasonableness to the target price for each line item and for the total target price overall.

- Send standard language and target price bidding spreadsheet to respondents deemed responsible and responsive.

- Receive target cost proposals.

- Determine if target price negotiation resulted in improved cost proposals.

If the receipt of target price proposals did not result in one or more cost proposals at or below the State's target price, the solicitation coordinator should evaluate whether an additional round of target price negotiation will result in one or more cost proposals at or below the State's target price.

5.12.3. Best and Final Offer (BAFO) Negotiations.

The best and final offer (BAFO) negotiation is an optional step to help obtain improvements in the scope of work or the most cost effective pricing available. The BAFO process may be useful when:

- No single response addresses all the specifications.

- The cost submitted by all respondents is too high (e.g., exceeds the State's estimate of expected costs, budget, etc.).

- The scores of two or more respondents are very close after the initial evaluation.

- All respondents submitted responses that are unclear or deficient in one or more areas.

5.12.3.1. Procedures for the use of the BAFO process.

The following rules shall apply to BAFO negotiations:

- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, should determine if the BAFO process will be conducted and which respondents are within the competitive range for receipt of the State's BAFO request.

- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, may restrict the BAFO negotiations to a single respondent or engage in a multi-party BAFO negotiation.

- BAFO's are best conducted using only those respondents within the competitive range. Any respondent deemed non-responsive or non-responsible or not within the competitive range may be excluded from participation, which shall be documented in the solicitation file.

- The content of the BAFO request may come from questions proposed by the solicitation coordinator, with respect to an ITB, or the solicitation coordinator in consult with the evaluation committee, with respect to all other solicitation methods.

- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, may request that a proposer readdress important aspects of the proposal such as but not limited to implementation schedule, level of support, amount of resources proposed, terms and conditions or cost.

- The solicitation coordinator will dispatch the BAFO request stating the elements to be covered and defining the date and time the BAFO must be returned.

- All communication to and from respondents regarding the BAFO solicitation shall be coordinated by the solicitation coordinator.

- All responses to the BAFO shall be returned to the solicitation coordinator.

- BAFO's submitted after the deadline shall not be considered. Only the original and most recently submitted responses may be considered for evaluation.

5.12.3.2. Content and structure of Solicitations utilizing a BAFO Process.

All solicitations utilizing a BAFO process shall contain the following:

- Best and final solicitations shall contain specific information on what is being requested. Enhanced core components of the solicitation may be solicited; however, <u>the integrity of the scope of the original solicitation must be maintained</u>. Respondents may be asked to provide additional clarification to specific sections of their response and to rework their proposal content or cost proposal.

- Best and final solicitations shall include submission requirements with time lines.

- Best and final solicitations shall contain specifics on how the offers will be evaluated and outline the process that will be used to determine the successful proposer.

- The solicitation coordinator with respect to an ITB or the evaluation committee with respect to all other solicitation methods will evaluate submissions of the BAFO and rescore the original response based entirely on the content of the BAFO submission.

- Respondents are not required to submit a BAFO and may submit a written response stating that their response remains as originally submitted.

- Requests for best and final offers shall not identify either the current rank of any of the respondents or the lowest costs currently proposed.

- Respondents may be requested to make an oral presentation regarding their BAFO.

- The solicitation coordinator with respect to an ITB or the evaluation committee with respect to all other solicitation methods will have full discretion to accept or reject any information submitted in a BAFO.

5.12.3.3. Scoring of BAFOs.

- The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, should score the responses after receipt of the BAFO responses.

- All scoring worksheets (e.g., original evaluation scores, best and final scores, etc.) should be retained for inclusion in the procurement file. Scores for the BAFO responses should be entered into a new score sheet/summary worksheet by the solicitation coordinator.

5.13. *Notice of Intent to Award.*

5.13.1. Recommendation and Award.

All contract awards should be on terms and conditions in the best interests of the State. Upon completion of the evaluation and any negotiations, responses will be ranked according to the total score assigned to each, in descending order. The respondent with the lowest cost of the responsive and responsible respondent with respect to an ITB, or the highest rated evaluation response, with respect to an RFP, is the respondent who should be recommended for award. The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, should send their recommendation, together with all working documentation, to the Chief Procurement Officer or his or her designee. The recommendation should be reduced to writing and include the reasons for selecting the respondent and should include any complete score sheets or pricing matrixes used in the award. The apparent awarded respondent will be contacted in writing by the Central Procurement Office in the form of an intent to award.

5.13.2. Tied Responses – Resolution.

A tie exists when two or more respondents offer goods or services that meet all specifications, terms and conditions at identical prices including cash discount offered for prompt payment. A tie will be broken by considering the following factors, in descending order:

- First preference shall be given to a "Tennessee Bidder". Pursuant to Tenn. Code Ann. § 12-4-121(c)(2), a "Tennessee Bidder" means a business that is:
    - Incorporated in this State;
    - Has its principal place of business in this State; or
    - Has an established physical presence in this State.
- Second preference shall be given to certified DBE respondents.
- Third preference shall be given to the respondent who was the low bidder on other items being bid for the same requisition.
- Fourth preference shall be given to the respondent who offers the best delivery.
- Fifth preference shall be given to further negotiations to break the tie.
- If a tie remains, it shall be broken by lot or coin toss.

5.13.3. Sole Source or Proprietary Contract Awards.

All Special Contract Requests to award a sole source or proprietary contract shall first be approved by the Chief Procurement Officer and be accompanied by sufficient documentation supporting the request. When it becomes apparent pursuant to a competitive procurement that the source of supply of the good or service at issue involves sole source or proprietary rights, the Chief Procurement Officer shall approve the contract award. Additional State approvals of the contract may be required pursuant to Section 5.15.3 of this Manual.

5.13.4. Notification of Selected and Non-selected Respondents.

The solicitation coordinator shall notify the selected respondent and non-selected respondents of the intent to award by providing all respondents with a copy of the intent to award sent to the awarded respondent.

5.14. *The Open File Period.*

The solicitation coordinator should have a complete file available to the public before the notice of intent to award is sent out, which begins the open file period. The procurement file should contain, at a minimum, a copy of the solicitation, relevant correspondence between the solicitation coordinator and any respondents, responses to the solicitation, including clarifications and information gathered at oral presentations as applicable, score sheets, relevant spreadsheets used in analyzing the technical responses and cost proposals, all responses to target price or BAFO negotiations, and the intent to award letter sent to the awarded respondent.

5.15. *Activities Required Before the Contract Effective Date*

All activities in this Section must be completed before a contract's effective date. A contract is not effective until all of the activities in this Section have been completed. If the activities in this Section are not completed before a contract's effective date, then the CPO may request that the contract be resubmitted with a new effective date. In no event shall the procuring State Agency request goods or services before the contract's effective date.

5.15.1. Contract Award.

Once the open file period has passed and no protests have been received, the solicitation coordinator may begin the award process in Edison with respect to an ITB. Awards of contracts pursuant to other procurement methods shall be conducted outside of Edison in accordance with the Rules, Central Procurement Office Policy and this Manual.

5.15.2. Edison.

The solicitation coordinator is responsible for all necessary uploading of contracts to be routed for approvals in Edison. For specifics as to Edison requirements relating to contract awards, the solicitation coordinator should consult the appropriate Edison manuals for procurement of goods or services.

5.15.3. Contract Approval.

5.15.3.1. Approval by State Officials.

The solicitation coordinator is responsible for obtaining all necessary approvals prior to a contract's effective date. (A) Statewide Contracts

must be approved by the following: (i) awarded respondent; (ii) solicitation coordinator; and (iii) Chief Procurement Officer or designee. (B) Agency Term Contracts must be approved by the following: (i) awarded respondent; (ii) Agency budget officer or designee; and (iii) Agency head or designee. The Central Procurement Office ("CPO") does not review Agency Term Contracts for fifty thousand dollars or less ($50,000) unless the contract involves a Rule Exception Request or Special Contract Request. Agency Term Contracts that are not subject to Central Procurement Office review will still be set to approved in Edison by authorized CPO personnel. Certain types of procurements and contracts require additional approvals, as specified in the chart below.

Contract Subject Matter	Required Approval or Endorsement
• Information technology	OIR Endorsement
• Medical/mental health-related professional, pharmaceutical, laboratory, or imaging	F&A eHealth Initiative Endorsement
• Contract between State Agencies that includes provisions for cooperative programs; • Provision for State legal consultation services	Governor
• Provision for State legal consultation services	Attorney General[1]
• 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
• Contract that involves engineering or architectural services relating to an improvement (including demolition) to real property in which the State of	State Architect

[1] See Tenn. Code Ann. § 8-6-106.

Contract Subject Matter	Required Approval or Endorsement
Tennessee has an interest	
• Delegation of procurement or contract authority by the Chief Procurement Officer; • Procurements and contracts for goods and services where authority exists under both the SBC and CPO to procure and contract; • Procurements and contracts for auditing services; • Cooperative agreements as provided in Tenn. Code Ann. § 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 or contracts; • No-Cost procurements or contracts; • Procurements or contracts with a term > 60 months (5 years);	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
• Procurements or contracts that propose to limit liability to < 2 times the maximum liability; • Procurements or contracts that propose to change the Records, Annual Report, Audit, or Monitoring clauses; • Procurements or contracts that allow for the negotiation of a necessary, mandatory, or standard contract clause; • Procurements allowing evaluation of the cost proposal prior to or contemporaneously with evaluation of the technical proposal; • Procurements or 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.	
• All requests to procure goods or services by negotiation with a single service provider 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	Fiscal Review Committee[3]

[3] Under 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 the requirements of § 4-56-107(b)(1).

Contract Subject Matter	Required Approval or Endorsement
which the State is contracting, or 4) otherwise changes an original contract or amended contract in a substantive manner.	

5.15.3.2. Fiscal Review.

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

- All proposed noncompetitive contracts with a term of greater than one year or containing a provision authorizing a contract renewal beyond one year, and having a cumulative value of $250,000 or more;

- Any amendment to a contract described above, whether originally procured competitively or noncompetitively which:

  - Increases or decreases funding;

  - Extends or shortens the contract term;

  - Changes the entity or name of the entity with which the State is contracting; or

  - Otherwise changes an original or amended contract in a substantive manner.

5.16 *Contract Amendments, Renewals, and Cancellations.*

Amendments and renewals must follow the same approval process as that of the original, or base, contract. The termination of a contract, for any reason, must be approved by the Chief Procurement Officer (or designee) and filed with the Office of the Comptroller.

5.17. *The Procurement File*

A procurement file shall be maintained for every solicitation. Such file shall include, but is not limited to, the following documentation, if applicable:

- A copy of the solicitation and any amendments or clarifications thereof;
- A copy of any approved Rule Exception Request;
- Any Conflict of Interest Disclosure documentation;
- Any evaluator attestations;
- A list of all vendors solicited to participate in the procurement;
- A copy of each evaluated response;
- A copy of each evaluation sheet;
- A copy of any clarifications sent to respondents;
- A copy of any negotiations (including BAFOs and Target Pricing);
- A copy of all correspondence between the vendor and the State regarding clarifications or negotiations;
- Any Cost Proposal and Scoring Guide or Bid Abstracts and Bid Analysis with the total evaluation cost amount and score for each evaluated response;
- Any completed Proposal Score Summary Matrix;
- A copy of all technical scores;
- A copy of all cost scores;
- A copy of all SME reports;
- The Evaluation Notice/File Open for Inspection letter;
- A copy of the protest procedures and the exact dollar amount of the Protest Bond;

- Documentation of any decision to determine a response bypassed or non-responsive;

- Any correspondence or documentation detailing the evaluation process, clarifications, and negotiations; and

- A copy of any pre-proposal conference and site-visit sign-in sheets.

6. Exceptions to Competitive Procurements.

6.1. *Emergency Purchases.*

The Chief Procurement Officer must approve all non-competitive emergency purchases.

6.1.1. Description of Emergency Purchases.

An Emergency Purchase may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action; such action entails the need to secure goods or services to carry out an emergency response. In such situations, competition should be engaged when practicable, but this policy recognizes that some emergencies are such that the exigencies of the situation may not allow for a competitive procurement.

6.1.2. Conditions of Use for Emergency Purchases.

Conditions of use for an Emergency Purchase may include, by way of example only, natural disasters, hazardous material spill or systems failure. An Emergency Purchase does not require the declaration of a state of emergency. Poor planning (e.g., failure to manage contract beginning dates or expiration dates) or the expiration of funds (e.g., expiration of federal funding for a project), however, do not constitute an emergency. These circumstances may require immediate action and may justify use of another non-competitive procurement method, but not an emergency purchase.

6.1.3. Emergency Purchase Approval Process & Written Documentation.

The Chief Procurement Officer may delegate emergency purchase authority to a State Agency to meet emergencies arising from any unforeseen cause, including, but not limited to, delays by contractors, delays in transportation, unanticipated work volume, acts of God or systems failures. Such delegations must not conflict

with an activated Tennessee Emergency Management Agency (TEMA) declared emergency.

Delegated State Agencies may procure goods or services via the emergency purchase method of procurement in accordance with the Rules or Central Procurement Office Policy. State Agencies should make emergency purchases through the Edison System and submit in writing to the Central Procurement Office the following information when requested by the Central Procurement Office:

- The circumstances leading to the emergency purchase;
- The Procurement-related actions taken in response to the emergency, including procurement methods used;
- A complete list of goods or services procured, including prices paid and total purchase amount; and
- As applicable, additional purchases expected, including expected price and total purchase amount, as of the time of the report.

6.1.4. Emergency Purchase Authorization Procedure.

Prior authorization of the Chief Procurement Officer is required for emergency purchases. The request for authorization may be approved in a true emergency or as the only method of payment for commodities and services ordered by the State Agency for reasons including improper planning, utilizing an improper purchasing method, and contract expiration. The procedure for obtaining an Emergency Purchase Authorization is as follows:

- The State Agency shall enter a direct entry purchase in Edison.
- The State Agency shall document in Edison justification for the emergency purchase.
- The State Agency shall contact the Chief Procurement Officer for emergency purchase authorization. In lieu of delegating the emergency purchase authority, the Chief Procurement Officer may elect to procure the goods or services through the Emergency Purchase Procedure.

- The State Agency must secure three (3) competitive responses, if practicable, and record the bids in Edison or provide justification for obtaining fewer than three (3) responses. If a sole source procurement, the State Agency must provide the justification required for the use of a sole source method of procurement.

- The State Agency shall obtain diversity information from the vendor recommended for award. This information must be entered in Edison.

Given the nature of the emergency and if practicable under the circumstances, agencies must actively solicit bids from minority-owned, woman–owned, Tennessee service-disabled veteran-owned, and small businesses. A current listing of active and certified diverse enterprises can be found on the Governor's Office of Diversity Business Enterprise Intranet website at www.tn.gov/businessopp/. When bids are not obtained from minority-owned, woman–owned, Tennessee service-disabled veteran-owned or small businesses, agencies shall fully document their good faith effort to solicit bids from such businesses.

6.1.5. Emergency Purchase Disapproval.

If an emergency purchase authorization is denied, the CPO will advise the State Agency as to the appropriate procedure to secure the goods or services requested.

6.1.6. Central Procurement Office Emergency Purchases.

An Edison one-time Requisition or Emergency Purchase request entered by the agency may be processed in compliance with the Rules, Central Procurement Office Policy or this Manual. Agencies must provide the Central Procurement Office with information regarding the emergency circumstances. If approved, the Central Procurement Office may utilize expedited purchase procedures including short closing dates, an informal emergency solicitation process or other authorized means.

6.1.7. Extraordinary Emergency Purchase.

Should emergencies affecting the health or safety of any person occur during periods when Central Procurement Office personnel are not available, any State Agency is authorized to contract for any commodity or service without prior

Emergency Purchase Authorization. The State Agency shall report such purchases to the CPO as soon as practicable. The procedure for "after the fact" authorization is the same as previously described for prior emergency authorization.

6.2. *Sole Source Procurements.*

6.2.1. Written Justification Required.

A sole source procurement is one where 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. A sole source procurement must be approved by the Chief Procurement Officer and the justification for awarding a sole source contract must be in writing. While not an exhaustive list, justifications for sole source procurements include:

- Only one company has the good or service that will meet the State's needs;
- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the specific good or service;
- The supplier possesses exclusive capabilities for the good or service at issue that are not obtainable from similar suppliers;
- An unusual or compelling urgency exists; or
- State users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

6.2.2. Sole Source Procurement Approval Process.

A State Agency that requests utilizing a sole source method of procurement must provide written justification to the Central Procurement Office prior to awarding a contract and beginning the contract approval process. Only the Chief Procurement Officer or his or her designee can approve the use of a sole source method of procurement. Upon approval by the Chief Procurement Officer or his

or her designee, the sole source procurement may be made without following competitive procurement procedures. A written quote should be obtained from the sole source vendor of goods or services and a purchase order will be issued without utilizing a competitive procurement method. The Central Procurement Office shall report approved Sole Source Procurements to the Comptroller of the Treasury in the form of a quarterly report. Sole source procurements shall be made by contract in accordance with the Rules, Central Procurement Office Policy, and this Manual. Competitive purchasing methods or negotiations to ensure competition should be used when practicable.

6.2.3. Chief Procurement Officer Approval of Sole Source Procurements.

The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider the following:

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

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

- Whether the program requirements can be modified so that competitive products or services may be used; and

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

6.2.4. Required Agency Documentation.

Any State Agency seeking to obtain goods or services through a sole source method of procurement must first obtain approval to do so from the Chief Procurement Officer. The agency, prior to using a sole source procurement, shall provide: (1) a Special Contract Request using the template on the CPO website: (2) any documents supporting the Special Contract Request or responding to the CPO's request for additional documentation; and (3) a letter from the vendor stating that it has the exclusive rights to provide the goods or services **if** the basis for the sole source request is that the vendor has the exclusive rights to provide the goods or services. The vendor's letter must also include diversity information, as required by the Central Procurement Office.

Only after the Chief Procurement Officer's approval may a State Agency proceed with a sole source procurement.

6.3. *Proprietary Procurements.*

6.3.1. Description of Proprietary Procurements.

A Proprietary Procurement is a procurement where competition is restricted to authorized distributors of certain goods or services.

6.3.2. Conditions of Use for Proprietary Procurement.

The circumstances justifying a proprietary procurement include:

- Compatibility of existing equipment or products is at issue;
- The good or service is covered by one or more patents or copyrights;
- Continuity of results is absolutely dependent upon the proprietary good or service at issue; or
- State users have extensive training or experience and use of similar goods or services would require significant reorientation and training.

6.3.3. Proprietary Procurement Approval Process.

All Special Contract Requests for Proprietary Procurements, with accompanied justification and circumstances for limiting competition to a select group of distributors or suppliers, must be submitted to the Chief Procurement Officer for approval prior to the draft or issuance of any associated procurement document. All other approvals for the selected procurement method still apply.

6.4. *Local Purchases.*

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

6.4.1. Small Purchases.

6.4.1.1. Description of Small Purchase.

State procurement professionals are encouraged to use competitive methods whenever practicable. State Agencies may utilize a Small Purchase authority without soliciting quotes or proposals from multiple vendors when the total value of a contract or a purchase will cost less than such amounts approved by the Procurement Commission. State procurement professionals shall also perform due diligence to ensure that the State is procuring goods and services on terms, conditions, and pricing that is in the State's best interests. All due diligence performed by a state procurement professional, such as benchmarking of pricing, shall be documented for small purchases from $5,000.01 to $10,000.00. State procurement professionals shall follow *Manual, Section 5.4.2.*, to identify prospective vendors of goods or services. Moreover, State procurement professionals shall consult Section 10.1 of the *Manual* and actively solicit goods or services from minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses when possible. Agency purchasing professionals shall obtain the Chief Procurement Officer's prior approval for procuring goods or services from sources other than a Statewide Contract when the goods or services to be procured are available from an existing Statewide Contract. In allowing a State Agency to purchase other than "off" of a Statewide Contract, the Chief Procurement Officer may consider, by way of example only, a Contracting Party's past performance, timeliness of performance (e.g., inability to supply the needed goods or services within the timeframe prescribed by the State Agency, etc.), the Contracting Party's ability to supply the goods or services (e.g., by having a source of supply of the requested goods or services), pricing, quality or compatibility concerns. See *Manual, Section 10.4. Purchases Made "Off" Statewide Contract*. See also Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures, Section 4.2.3*.

6.4.1.2. Conditions of Use for Small Purchase.

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

small purchase authority and a competitive procurement method must be used (e.g., RFP, ITB or informal quotes).

6.4.1.3. Small Purchase Approval Process.

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

6.4.2. Informal Purchases

6.4.2.1. Description of Informal Purchase.

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

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

6.4.2.2. Conditions of Use for Informal Purchase Authority.

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

6.4.2.3. Informal Purchase Approval Process.

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

6.4.3. Small and Local Purchase Thresholds.

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

Requirement	Dollar Amount of Purchase
Small Purchase Authorization-Approval by all members of the procurement commission	$.01 to $10,000
Informal Solicitation Authorization-Approval by all the members of the procurement commission.	$10,000.01 to $50,000

6.5. *Utility Contracts.*

The Central Procurement Office 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 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 the Rules or Central Procurement Office Policy. If the Chief Procurement Officer determines that such a purchase is only available from a single source, the use of a sole source method of procurement shall be utilized.

6.6. *Reverse Auction Process*.

6.6.1. Purpose.

The Central Procurement Office shall follow these procedures to achieve maximum competition among qualified respondents and to obtain the highest level of quality at the lowest price for goods or services utilizing procedures that promote competition to the greatest extent possible.

6.6.2. Criteria for Use.

The State may elect to utilize the reverse auction procurement method when all of the following are true:

- The minimum dollar value of a response exceeds $100,000.00.
- Requisition line items are fewer than ten (10), which will support a dynamic online response environment.
- The number of approved online respondents exceeds five (5).
- The number of prospective respondents on the state vendor registry is adequate to support qualifying the minimum five (5) respondents.
- Similarity and accuracy of NIGP categories codes exist.
- The number of NIGP product sub-categories is three (3) or fewer.
- Product equivalents or generic specifications are available.
- The prospective respondents have a widely available distribution network.
- The State has fewer than seven (7) end user delivery locations.

6.6.3. Process Overview.

The reverse auction event is a competitive real time internet procurement process that allows purchase orders and contracts to be awarded to the respondent or respondents offering the lowest price. Responding to a reverse auction one-time purchase or contract is open to all respondents who submit a Reverse Auction Qualification Summary Response (the "summary") by the designated deadline. This summary will contain all of the details associated with the event such as qualification requirements, scope, specifications, terms and conditions and details regarding the auction process and associated deadlines.

After reviewing all summaries submitted to determine qualification, each qualified prospective respondent will be added to a list of approved respondents to be used by the Central Procurement Office for password assignment in Edison. All prospective respondents submitting a summary will be notified as to whether or not they have been approved to participate in the reverse action. Those qualified prospective respondents will be sent information regarding the pre-response conference, where details about the solicitation event will be discussed.

At the pre-determined time of the event, approved prospective respondents will sign in to Edison to submit their responses in an auction type format, competing for the lowest price. All participants will see the lowest response as it is being submitted, but the identity of the respondent will remain anonymous. The solicitation coordinator will receive responses until the designated ending time for the event. Edison allows for the response submittal time to be extended based on the time of the last response submitted. This choice will be discussed at the pre-response meeting. An award will be made to the lowest responsive and responsible prospective respondent based on their adherence to the response requirements as defined in the event summary.

The reverse auction process encompasses two phases: (a) issuance of pre-qualification documents that include requirements, specifications, terms and conditions, etc. and; (2) the online auction event itself.

6.6.4. Application.

The following is a list of factors to consider when determining whether or not to conduct a reverse auction procurement method:

- The Solicitation coordinator has reviewed the purchase request and in conjunction with his or her team lead and has determined that conducting a reverse auction may be suitable to achieve the best value to the State.

- After determining that reverse auction is suitable, the Solicitation coordinator will submit a business case detailing the category, specifications and requirements to their respective Director for approval.

- The reverse auction process will not be used to procure construction, architectural or professional services as limited by statute.

6.6.5. Reverse Auction Requirements.

6.6.5.1. Reverse Auction Announcement.

The solicitation coordinator should provide notice of reverse auction procurement (the "reverse auction announcement") to prospective respondents who provide the goods or services to be procured. The reverse auction announcement should also include the summary, which will provide details on the requirements. This summary should be completed and returned to the Central Procurement prior to the due date specified in the event. A deadline for submittal of responses to the summary will be provided within the solicitation. The following are some general response requirements the reverse auction announcement will contain:

- Information about the state's chosen method of procurement and the process involved to determine participation.

- Instructions governing communications, including but not limited to instructions for submitting questions and posting answers electronically and or date, time and location of the pre-response meeting;

- A description of the scope of goods or services to be purchased along with specifications, terms and conditions, bond requirements (if any), delivery information and an estimated start date for any contract resulting from an award.

6.6.6. Qualified Participants.

The Central Procurement Office will use information from the qualifications summaries to determine which prospective respondents meet the prequalification requirements for participation. The state reserves the right to exclude respondents who are deemed non responsive or not responsible. Qualified prospective respondents will be notified of a date and time for a pre-response meeting and be sent documents needed to submit for Edison access along with detailed instruction sheets for auction participation.

Qualified respondents will be encouraged to familiarize themselves with the Edison system and work through any firewall, server or otherwise communication issues well before the date of the reverse auction. The Solicitation coordinator will be responsible for answering questions, helping with prospective respondent set up and all other needed assistance with preparation.

6.6.7. Summary Submission.

6.6.7.1. Conciseness.

The Central Procurement Office discourages lengthy and costly response submittals. Response submittals should be prepared simply and economically and provide a straightforward, concise description of the respondent's capabilities to satisfy the requirements of the solicitation event. Emphasis should be on completeness and clarity of content.

6.6.7.2. Formatting.

Respondents must follow all formats and address all portions of the response submittal providing all information as requested. Respondents may copy or duplicate any portion of the solicitation event for use in responding to the reverse auction announcement provided that the response submittal clearly addresses all of the Central Procurement Office's information requirements.

6.6.7.3. Completeness.

Respondents must respond to every subsection under the terms and conditions. Respondents must label each response to the solicitation event requirements with the section and subsection numbers associated with the

specific requirement in the event. Failure to follow the specified format or address all of the subsections may result in rejection of the response.

6.6.7.4. Accuracy.

Responses must not contain extraneous information. All information presented in a response must be relevant in response to a requirement of the event, must be clearly labeled, and, if not incorporated into the body of the response itself, must be referenced to and from the appropriate place within the body of the Technical Response Submittal. Any information not meeting these criteria shall be deemed extraneous and shall in no way contribute to the evaluation process.

6.6.7.5. Language and Attachments.

Technical Response Submittals, if submitted in hard copy, shall be prepared on standard 8 ½" x 11" paper. Foldouts containing charts, spreadsheets, and oversize exhibits are permissible. All responses, as well as any reference material presented, must be written in English. All response submittal pages must be numbered.

6.6.8. Technical Response Submittal.

The Technical Response Submittal shall be divided into the following sections. Note: these sections may be modified to fit individual needs of a particular response.

- Transmittal Letter
- Mandatory Qualifications
- Financial and Credit information
- General Qualifications
- Experience
- References
- Technical Approach and Schedule

6.6.9. Response Transmittal Letter.

The Technical Response Submittal must provide a written transmittal and offer of the response in the form of a standard business letter. The Response Transmittal Letter shall reference and respond to each subsection in sequence and may contain corresponding documentation as required. Each response submittal must meet the Response Transmittal Letter requirements and provide all required documentation. A Response Transmittal Letter is mandatory, and failure to provide the information as required may result in the response being considered non-responsive and rejected.

The Response Transmittal Letter, on company letterhead, shall be signed by a company officer empowered to bind the prospective respondent to the provisions of the solicitation event and any resulting contract or purchase order awarded. The Response Transmittal Letter shall provide the complete name and Social Security Number of the individual or the legal entity name and Federal Employer Identification Number and the vendor number assigned by the Central Procurement Office of the firm making the response submittal. Additionally, the letter shall state whether the prospective respondent or any individual who shall perform work under the contract has a possible conflict of interest and the nature of that conflict. The Central Procurement Office reserves the right to make a determination whether the conflict is material and could potential influence the objectivity of the prospective respondent in performance of the contract.

The Response Submittal Letter shall state whether the prospective respondent or any individual who shall perform work under the contract has a possible conflict of interest and the nature of that conflict. The Central Procurement Office reserves the right to make a determination whether the conflict is material and could potential influence the objectivity of the prospective respondent in performance of the contract. Ideally, this letter shall include an acknowledgement statement confirming the receipt of addendums by addendum number and date, if applicable.

If the prospective respondent is a legal entity (e.g., a joint venture, a partnership, or limited liability corporation), the prospective respondent is required to submit a detailed description of the relationship between the prospective respondent and any affiliates or partners and confirm the portions of the contract that will be performed by each affiliate or partner.

Response Qualifications shall include:

- Form of business (i.e. individual, sole proprietor, corporation, non-profit corporation, partnership, joint venture, Limited Liability Company, etc.),

- The address of the prospective respondent's home office and other pertinent addresses and contact information.

- A description of the prospective respondent's background, organizational history, size, and years in business,

- Whether there have been any mergers, acquisitions, or sales of the prospective respondent's company within the last ten (10) years (if so, an explanation providing relevant details),

- A statement as to whether the prospective respondent's firm or any of its employees, agents, independent contractors, or subcontractors, to the best of the prospective respondent's knowledge have been convicted of, pled guilty to, or pled nolo contendere to any felony; and if so, an explanation providing details,

- If the prospective respondent enters "yes" to one or more of the four questions on the Standard Term and Condition titled "Vendor Responsibility", the prospective respondent shall submit a statement as to whether there is any current litigation against the prospective respondent and the details of such.

- A statement of whether, in the last ten (10) years, the prospective respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or has undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details.

6.6.10. Mandatory Qualifications.

Technical Response Submittals shall provide responses and documentation, as required, which indicate that the prospective respondent has met the mandatory qualifications requirements. Any Technical Response Submittal which does not meet the mandatory requirements and provide all required documentation may be considered non-responsive, and the response may be rejected. The technical submittal shall contain written confirmation that the Prospective respondent shall

comply with all of the requirements and shall accept all terms and conditions of the solicitation event. Any prospective respondent who fails to provide said confirmation without exception or qualification, the Central Procurement Office, at its sole discretion, may determine the response to be non-responsive and the response may be rejected.

6.6.11. Mandatory Financial and Credit Information.

The prospective respondent must provide documentation that demonstrates sufficient financial strength and resources to provide the scope of services as required. The audited financial statements must be prepared with all monetary amounts detailed in United States currency. These financial statements shall be prepared and audited under accounting principles generally accepted in the United States. These financial statements must include the auditor's opinion letter along with common sized balance sheets and income statements for the last three years of business. In addition, financial statements shall include documentation disclosing the amount of cash flow from operative activities for the prospective respondent's most current operating period and a detailed explanation of the factors contributing to any negative cash flows. This documentation must include common size balance sheets and income statements for the last three years, prepared in accordance with generally accepted accounting principles.

Standard diversity language as used in all solicitation events shall also be included in the response transmittal letter.

6.6.12. Central Procurement Office Responsibility.

- Only those respondents on the qualified respondents list will be allowed to participate in the auction event.

- The solicitation coordinator will provide the necessary administrative support to ensure that the integrity of the auction event is not compromised.

- The solicitation coordinator will keep an event record, which will include the prices offered by the respondents. The event record will become part of the contract documents and a public record at the conclusion of the event.

- The Edison System will be configured such that a prospective respondent will not know the identity of competing respondents until the event has concluded.

- The solicitation coordinator will begin the event through electronic notification to all qualified respondents.

- Respondents may submit multiple prices during the event. The lowest price offered will become the price portion of the response.

- Responses must be submitted by, or under the direction of, an authorized representative of the prospective respondent (sign on and password) as designated in the qualifications summary.

- The auction event will have a scheduled stop time. The event may be extended if responses are received within a predetermined amount of time prior to the scheduled stop time. Specific procedures on time extension shall be contained in the event procedure manual that will be distributed to all qualified respondents.

- The event will conclude at either the scheduled stop time or the time at which all extensions are completed, whichever is later.

6.6.13. Response Award.

After the conclusion of the auction event, the Central Procurement Office will consider the qualifications summary and the price offered during the auction event to determine the lowest responsive and responsible prospective respondent. The solicitation coordinator will begin the second phase of the evaluation process. Beginning with the low prospective respondent for the respective lot, the Agent will seek required samples, insurance documents, detailed product literature or any other information set forth in the qualification summary to evaluate the prospective respondent as being responsive and responsible. The Central Procurement Office reserves the right to reject any and all responses, award partial contracts, or reject all responses when:

- Supplies or services are not in compliance with the requirements, specifications, and terms and conditions set forth in the reverse auction announcement; or

- Pricing offered is determined to be excessive in comparison with existing market conditions, or exceeds the available funds; or

- It is determined that awarding of any or all items will not be in the best interest of the state.

- An apparent low prospective respondent found not to be responsive or responsible shall be notified by the Central Procurement Office of that finding and the reasons for it. Such notification may be given by electronic means and should be provided at the beginning of the open file period.

- Written notice of the award shall be provided to the successful prospective respondent. Notice of award shall be made available to the public.

6.7. *Purchase Order Exemptions.*

Due to the unique nature of the goods or services involved, the CPO will not require a Purchase Order to accompany payment requests for certain purchases. No Purchase Order is required when using the P-Card in compliance with the P-Card Policy. The following items do not require a Purchase Order or a contract if: (a) they are not available on a statewide or agency term contract; (b) they are supported by an invoice from the vendor of the goods or services; (c) performance occurs in no more than ninety (90) days; and (d) the purchase does not exceed ten thousand dollars ($10,000). The ten thousand dollar ($10,000) limit does not apply to items with an asterisk.

- Telephone bills*
- Utility bills, including connection fees*
- Landfill charges
- Books, periodicals, or publications
- Advertisements, e.g., through radio, television, print, or internet
- Freight charges not incurred in connection with the purchase of supplies or equipment
- Postage charges
- Bonding fees
- Notary public fees
- Deed registration fees
- Court fees
- Title insurance*
- Fees in connection with titles or title searches
- Building permits
- Meeting expenses, e.g., charges for reserving a meeting venue and expenses for refreshments served at meetings
- Vehicle rental while on approved travel

- Tuition, fees, and supplies for state employee training that the Tennessee Department of Human Resources has approved
- Chemical and pesticide samples tested by the Tennessee Department of Agriculture as required by federal or state law (individual purchases cannot exceed $200.00)
- Prescriptions for the emergency treatment of clients or wards of the State
- Late fees incurred under the Prompt Pay Act

6.8. *Cooperative Purchase Agreements*.

6.8.1. Purpose.

The Central Procurement Office is authorized to procure, participate in, sponsor, conduct or administer, with other states, local governments or multistate or multi-governmental coalitions, a Cooperative Purchasing Agreement for purchase of goods or services. A Cooperative Purchase Agreement may include an option for other states or governmental entities that did not participate in the original Cooperative Purchasing Agreement procurement to participate in the Cooperative Purchasing Agreement.

6.8.2. Scope.

The Central Procurement Office may enter into an existing Cooperative Purchasing Agreement or may act as the lead state with respect to a Cooperative Purchasing Agreement procurement by issuing a solicitation, receiving and evaluating solicitation responses and awarding one or more contract to one or more respondents. The Cooperative Purchasing Agreement shall specify that each party is solely responsible for all purchases made under its terms. A participating addendum or other authorizing documents shall be used with the Cooperative Purchasing Agreement to resolve any conflicts with Tennessee law, rules or Central Procurement Office policies.

6.8.3. Procedure.

6.8.3.1. Participating in Existing Cooperative Purchasing Agreements.

Prior to entering into any contract awarded through a Cooperative Purchasing Agreement, the Central Procurement Office shall first determine whether the Cooperative Purchasing Agreement, or the underlying contracts making up the Cooperative Purchasing Agreement,

was procured consistent with applicable Tennessee law. If established by a competitive procurement process consistent with applicable Tennessee law, the Central Procurement Office will review the specifications and proposed terms and conditions of the contract to ensure that the Cooperative Purchasing Agreement does not contravene applicable Tennessee law. The Central Procurement Office will also conduct all necessary market research and analysis to ascertain whether the pricing and terms and conditions are equal to or more favorable than those that Tennessee could procure by engaging in a separate procurement.

6.8.3.2. Acting as Lead State.

The Central Procurement Office shall follow all policies and procedures as set forth in this Manual. Any Cooperative Purchasing Agreement procured by the Central Procurement Office shall be available to Tennessee agencies, local governments, Tennessee higher education institutions, and states and local governments outside of Tennessee, except as otherwise provided in the Cooperative Purchasing Agreement.

6.8.3.3. Decision Factors for Entering Into a Cooperative Purchasing Agreement.

The following factors may be considered w hen evaluating whether to utilize a Cooperative Purchasing Agreement versus procuring on the open market:

- The estimated volume of goods or services needed;
- Whether the Cooperative Purchasing Agreement provides standard specifications or scope of services;
- The potential for cost savings by using the Cooperative Purchasing Agreement;
- The time needed to establish the Cooperative Purchasing Agreement;
- Whether there is a history of poor quality or difficulty in developing specifications for the goods or services in Tennessee;

- If the Cooperative Purchasing Agreement was established by competitive sealed responses;

- If other state agencies, local governments or institutions of higher education in Tennessee will utilize the Cooperative Purchasing Agreement; and,

- If the terms and conditions of the Cooperative Purchasing Agreement are consistent with applicable Tennessee law.

6.8.3.4. Supporting Documents.

A request by a procurement professional to have the State enter into a Cooperative Purchase Agreement or for the State to act as the lead state in a Cooperative Purchase Agreement should be submitted to the Chief Procurement Officer and supported by the following supporting documents as applicable:

- Details showing that the Cooperative Purchasing Agreement was a result of full and open competition;

- A copy of the Cooperative Purchasing Agreement;

- A form of Participating Addendum or other authorizing document in which the State is expected to sign; and

- A business case study that details why the Cooperative Purchasing Agreement is in the State's best interests (e.g., pricing on equal or better terms and conditions than if the State had procured the goods or services in the open market by itself, greater quality or source of supply, justifications for entering into the Cooperative Purchasing instead of an open market procurement, etc).

7. Managing the Relationship with the Contracting Party.

Once a contract has been awarded and duly approved, a contractual relationship exists between the State and the awarded respondent. The procurement professional responsible for managing the contract should do all of the following:

- Maintain a detailed, written audit trail of all discussions and agreements.

- When documenting contracting party tasks, the operative phrase is “the contracting party shall.”

- Get a written commitment from contracting party team members, escalation, etc.

- Clearly define roles and responsibilities.

- The rules of engagement may include onsite attendance requirements if necessary, but if so, these requirements should be clearly communicated.

- Clearly define and communicate any implementation strategies.

- Reserve the right to review contracting party designs and request necessary changes.
- Request submittal of any project plans in advance for approval.

- Request submittal of test plans in advance for approval.

- Specify documentation required from the contracting party, including media and format.

- Specify support and maintenance to be provided the contracting party or the State.

- Prearrange change control processes and pricing to address scope creep.

- Specify that any training provided by the contracting party, the cost of which is not included in the contract price, must be preapproved by the appropriate State official.

8. Protest and Stay of Award.

8.1. *Protest/Stay of Contract Award received by the CPO.*

Confirm statutory protest requirements have been met:

- The protesting party has filed a signed protest and bond within seven (7) days after the protesting party knows or should have known of the facts giving rise to the protest.

- Review form of bond and insure that it is at least 5% of lowest of the lowest cost response; or

- The protesting party has made a timely request for bond waiver that meets all statutory requirements.

Respondents who have protested may also submit to the CPO a petition for stay of award. A stay should be routinely granted unless declining to do so is necessary to protect substantial interests of the state to proceed with the award – if so, protest committee must approve denial of stay request.

8.2. *Confirm Receipt of Protest/Stay of Contract Award.*

Send letter to protesting party acknowledging receipt of protest.

8.3. *Preparation of Protest Binders/Delivery to Central Procurement Office.*

8.3.1. Protest Binder.

The Central Procurement Office or State Agency shall prepare five (5) protest binders that include the following items:

- Cover Page.

- Index - with tabs identified, for easy reference.

- Timeline of Relevant Events.

- Letter of Protest with Bond or Bond Exemption.

- Letter to Protester by CPO acknowledging receipt of protest.

- Agency Response to the Protest (submitted to the CPO addressing the issues raised by the Protest).

- Solicitation with Amendments.

- Technical & Cost Proposal submitted by the Best Evaluated Proposer.

- Technical response and cost proposals submitted by the protesting party.

- Evaluation notice with summary score matrix.

- Evaluator score sheets.

- Correspondence or communications log (as applicable).

- Any other documents that are part of the procurement file that solicitation coordinator feels are pertinent to the protest.

8.3.2. Position Statements.

- Invite the Intended Awardee to submit a Position Statement in response to the Protest.

- The State Agency or any respondent to the solicitation shall be allowed ten (10) calendar days from receiving notice to file a written response to a protest.

8.3.3. Protesting Party's Reply.

The Protesting party shall have five (5) calendar days to respond to the position statement of the agency and any respondent. The reply may not raise any new protest grounds.

8.3.4. Schedule and Notice of Protest Hearing.

- Ask the solicitation coordinator to provide a list of interested parties that should be notified of the Protest Hearing date and time.

- Include the names, title, and email address of such individuals.

- Confirm Invite List – e.g., all respondents, State Agency contacts and appropriate staff of the Central Procurement Office.

- Considerations for timing of protest hearing: current contract end date, will out of town respondents be attending, etc.

- Notify all interested parties of hearing date, time, and location.

8.3.5. Protest Hearing Decision Letter.

A protest is resolved and subject to review by the Protest Committee when the Chief Procurement Officer or his or her designee has sent a written notice of decision. The Chief Procurement Officer has sixty (60) days to resolve a protest. A protest not resolved within sixty (60) days is deemed denied on the 60th day after the protest is filed. The protesting party, in such event, has seven (7) days to appeal the deemed denial of his or her appeal to the Protest Committee.

8.4 *Debarment and Suspension.*

8.4.1. Statement of Policy and Purpose.

It is the policy of the Central Procurement Office to solicit responses from Respondents who are responsive and responsible and contract with vendors who conduct their business with high ethical standards. Debarments or Suspensions may be imposed at the discretion of the Chief Procurement Officer in order to maintain the integrity of the procurement and contract management processes and to ensure public trust and confidence in the operations of the State. If a Respondent or a Vendor is debarred or suspended, the Respondent or Vendor is debarred or suspended from procurements with the State or its Agencies under the Central Procurement Office's authority, as specified by the Chief Procurement Officer. Notwithstanding the foregoing, the existence of a cause for debarment does not necessarily require that the Respondent or Vendor should be debarred or suspended. The seriousness of the Respondent's or Vendor's acts or omissions and any remedial measures or mitigating factors should be considered by the Chief Procurement Officer in making any debarment or suspension decision.

8.4.2. Grounds for Debarment or Suspension.

A Respondent or a Vendor may be debarred or suspended if the Respondent or Vendor:

- Is presently debarred, suspended, proposed for debarment, or voluntarily excluded from participation in solicitations conducted by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;

- Within a three (3) year period preceding the contract, has been convicted of, or had a civil judgment rendered against the Respondent or Vendor, from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public 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;

- Is presently indicted or otherwise criminally or civilly charged by a government entity with commission of any of the offenses detailed above; and has within a three (3) year period preceding the contract had one or more public transactions terminated for cause or default;

- Has been awarded a contract pursuant to a public procurement, but has repudiated the award made by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;

- Has willfully breached any contract with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government; or

- Has exhibited a history or pattern of failure to perform, or of unsatisfactory performance of one or more contracts with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.3. Debarment or Suspension Considerations.

Before arriving at any debarment or suspension decision, the Chief Procurement Officer should consider factors such as the following:

- Whether the Respondent or Vendor had effective standards of conduct and internal control systems in place at the time of the activity which gave rise to debarment or suspension or had adopted such procedures prior to any investigation of the activity cited as a cause for debarment or suspension.

- Whether the Respondent or Vendor brought the activity cited as a cause for debarment or suspension to the attention of the appropriate government official in a timely manner.

- Whether the Respondent or Vendor has fully investigated the circumstances surrounding the cause for debarment or suspension and, if so, made the results of the investigation available to the Chief Procurement Officer.

- Whether the Respondent or Vendor cooperated fully with the Central Procurement Office or State Agencies during any investigation or any court or administrative action.

- Whether the Respondent or Vendor has paid or has agreed to pay all criminal, civil, or administrative liability or damages for the activity, including any investigative or administrative costs incurred by the State, and has made or agreed to make full restitution.

- Whether the Respondent or Vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment or suspension.

- Whether the Respondent or Vendor has implemented or agreed to implement remedial measures, including any identified by the State.

- Whether the Respondent or Vendor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

- Whether the Respondent or Vendor has had adequate time to eliminate the circumstances within the Respondent's or Vendor's organization that led to the cause for debarment or suspension.
- Whether the Respondent's or Vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment or suspension and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this Section 8.4.3 is not determinative of a Respondent's or Vendor's present responsibility. Accordingly, if a cause for debarment or suspension exists, the Respondent or Vendor has the burden of demonstrating, to the satisfaction of the Chief Procurement Officer, its ability to fulfill its present responsibilities and that debarment or suspension is unnecessary.

8.4.4. Continuing Duty to Disclose.

Respondents, or Vendors to whom a contract has been awarded must provide immediate written notice to the State if at any time the Respondent or Vendor learns that it has failed to disclose information that its principals, affiliates or

subcontractors are excluded or disqualified from contracting with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.5. Written Notice.

If the Chief Procurement Officer determines that a Respondent or a Vendor should be suspended or debarred from contracting with the State, the Chief Procurement Officer shall provide the Respondent or Vendor with written notice of the grounds for which the Respondent or Vendor is debarred or suspended from participating in State solicitations. The notice shall also specify the period of time in which the Respondent or Vendor is debarred or suspended. The Respondent or Vendor may, within seven (7) calendar days from when the notice of debarment or suspension was sent, request an informal hearing and provide a response to the CPO why the Vendor should not be debarred or suspended. The decision of the Chief Procurement Officer will be final and shall not be subject to further administrative review.

8.4.6. Reinstatement or Reduction.

Respondents or Vendors who seek to be reinstated after being debarred or suspended may submit a letter to the Chief Procurement Officer stating why the Respondent or Vendor should be reinstated. The Respondent's or Vendor's request for reinstatement should include the steps the Respondent or Vendor has taken to avoid the circumstances that gave rise to debarment or suspension and what action Respondent or Vendor has been taken to mitigate any harm caused by the Respondent's or the Vendor's actions. For good cause shown, the Chief Procurement Officer, at his or her sole discretion, may reduce the period of debarment or suspension or rescind the debarment or suspension, thus reinstating the Respondent or the Vendor in good standing. The Chief Procurement Officer may rescind or reduce the period or extent of debarment or suspension, upon the Respondent's or Vendor's request, supported by documentation, for the following reasons:

- Newly discovered material evidence;
- Reversal of the conviction, administrative findings or civil judgment upon which the debarment was based;
- Bona fide change in ownership or management;

- Elimination of other causes for which the debarment or suspension was imposed; or

- Other reasons the Chief Procurement Officer deems appropriate.

9. Respondent Debriefing.

If requested by non-selected respondents, the Central Procurement Office should arrange a debriefing conference after the Open File Period and assuming no protests have been filed by the respondent requesting the debriefing. No debriefing of respondents shall occur while a protest is pending. Evaluation Committee members are encouraged to participate in the debriefing. Respondents are debriefed individually.

9.1. *Information Provided at Debriefing.*

Information given during these conferences must be factual and precise. No respondent cares to lose a contract, and will want good justification when it does. This is particularly true when proposal preparations were an extremely costly process. Therefore, the respondent has a right to know where its proposal failed and why another was chosen.

9.2. *Written Comments.*

It is strongly recommended the debriefing be written beforehand and read to the respondent during the debriefing conference. The respondent should not be compared to another respondent, nor be given any cost information other than the position of the proposal in relation to all other responses. It may be advisable to record all questions asked and responses given during the conference, particularly when the contract is one involving considerable effort and funds.

9.3. *Commenting on Other Responses Prohibited.*

Procurement professionals who attend respondent debriefings should avoid discussing responses or presentations of other respondents, including the selected respondent. The focus should be on the proposal and presentation of the respondent requesting a debriefing.

10. Miscellaneous.

10.1. *Governor's Office of Diversity Business Enterprise.*

All agencies should actively solicit goods or services from minority-owned, woman–owned, Tennessee service-disabled veteran-owned, and small businesses. A current listing of active and certified diverse businesses can be found on the Governor's Office of Diversity Business Enterprise website at www.tn.gov/businessopp/.

10.2. *Site Visits Related to Procurements.*

Site visits needed to properly evaluate goods or services for a pending or future solicitation are allowed subject to the following conditions:

- If site visits are required within the solicitation for evaluation purposes, the State, and not the respondent being evaluated, must pay for such visits.

- Exceptions to this policy may be made by the Chief Procurement Officer or his or her designee. Any exception must be made on a case-by-case basis. If an exception is made, a written determination signed by the Chief Procurement Officer or his or her designee shall be included in the contract file.

- State employees making such site visits will incur and recover travel costs from the State entity for which the procurement is being conducted in accordance with State travel regulations.

- No direct reimbursement of individuals by a respondent is permitted. The procuring agency will determine all costs incurred by State employees in connection with the site visit and bill the appropriate respondent for reimbursement of costs by means of a check payable to the State entity.

10.3. *Changes to Standard Terms and Conditions.*

The Chief Procurement Officer is the official responsible for establishing standard terms and conditions for all solicitation documents or contracts procured by the Central Procurement Office or the State Agencies. No changes may be made to the standard terms and conditions without the written approval of the Chief Procurement Officer. Additional State approvals may be required pursuant to Section 5.15.3. of this Manual.

10.4. *Purchases Made "Off" Statewide Contract.*

The use of Statewide Contracts to the fullest extent practicable has enormous advantages to the State in terms of terms of supply, quantity, quality, pricing, discounts and rebates. Towards that end, the Central Procurement Office and State Agencies are required to utilize Statewide Contracts for procuring goods or services to the extent these goods or services are available on an existing Statewide Contract. No "off" Statewide Contract purchases may be made by any procurement professional without the prior approval of the Chief Procurement Officer or his or her designee.

10.5. *Vendor Registration.*

All vendor registration application information received by the Central Procurement Office should be reviewed to ensure that the applicant meets all qualifications as a prospective respondent to a solicitation issued by the State.
If the vendor acknowledges on the vendor registration application that his or her business entity is a minority-owned, woman-owned, Tennessee service disabled-owned, or small business, the Central Procurement Office should forward the application to the Governor's Office of Diversity Business Enterprise (Go-DBE) for registration and possible certification.

State Agencies should encourage prospective respondents to contact the Central Procurement Office or refer prospective respondents to the Central Procurement Office's website located at www.tennessee.gov/generalserv/cpo/ to obtain a vendor registration application.

The vendor registration application may be completed and submitted online or downloaded from the Central Procurement Office's website. Forms and instructions may be obtained in person from:

Central Procurement Office
3rd Floor William R. Snodgrass Tennessee Tower
312 Rosa L Parks Ave.
Nashville, TN 37243-1102

10.6. *Freight, Shipping, Receipt, Storage and Inspection of Goods.*

10.6.1. Freight and Shipping.

The State will accept two types of shipping: FOB Destination and FOB Origin.

- Free On Board (FOB). “FOB” is an acronym for "free on board" when used in a sales contract. The seller agrees to deliver merchandise, free of all transportation expense, to the place specified by the contract. After delivery is complete, the title to all the goods and the risk of damage become the buyer's.

- FOB Destination. Under “FOB Destination”, title and risk remain with the seller until it has delivered the goods to the location specified in the contract.

- FOB Origin. “FOB Origin” means that title and risk pass to the buyer at the moment the seller delivers the goods to the carrier. The parties may agree to have title and risk pass at a different time or to allocate shipping charges by a written agreement.

10.6.2. Receipt.

Upon receipt of supplies, materials, and equipment, the receiving agency shall make a written certification that the items received were equal in quality and quantity to those purchased by entering the receipt information in Edison. The agency’s copy of the Purchase Order may be used to check goods or services received.

10.6.3. Shipping Documents.

Upon delivery, the designated receiving agent should do the following:

- Verify the Purchase Order/release number on the shipping documents, freight bill, packing slip, and invoice; the agency is the actual consignee; the corresponding agency Purchase Order in Edison; and that the number of cartons, crates, etc., listed on the freight bill is the same as the amount received.

- Examine containers for signs of external damage or pilferage. If signs of damage or pilferage are obvious or suspected, it must be noted on each copy of the freight bill and signed (not initialed) by the delivering driver.

- Sign the freight bill and retain a copy for agency records. The notation "SUBJECT TO FURTHER INSPECTION" shall accompany the receiving agent’s signature.

- Count and inspect the internal contents of all boxes, crates or cartons to determine that the material received matches the description listed on the packing slip, Purchase Order, and receiving documents in regard to quantity, quality, size, color, model number, specifications, etc.

- If any discrepancies (i.e. overages, shortages, damages) exist, they must be noted on the packing slip, receiving report, and Purchase Order. These discrepancies must be reported immediately to the agency's procurement officer to enable the appropriate corrective action to be taken.

- All receiving documents (i.e. packing slip, receiving report, and Purchase Order), must indicate the quantity actually received, date received, vendor delivery, and document number.

- The material received must be retained and properly stored in the agency warehouse or sent to the proper department. Damaged goods deemed unacceptable are to be retained for further disposition.

10.6.4. Freight Collect/Collect on Delivery Shipment (C.O.D.).

- Freight charges will not be accepted unless prepaid by the shipper and added to the invoice. Freight charges must appear as a separate item on the Purchase Order.

- If the freight bill reads "Collect", the receiving agent must request that the shipper contact the driver to change the charges to read "Prepaid". If all parties are in agreement, the receiving agent must ensure the driver changes the charges to read "Prepaid" and signs both copies of the freight bill.

- Under no circumstances may the receiving agent sign a "Collect" freight bill that should be marked "Prepaid".

- The receiving agent shall not accept unauthorized "C.O.D." shipments.

10.6.5. Incorrect Items Shipped.

- If the entire shipment contains merchandise that was not ordered or does not meet the specifications, the receiving agent shall not sign any

receiving documents and must refuse the shipment. The shipment is to be returned at the vendor's cost.

- If only one or a few items of an order are shipped incorrectly and the shipment has been delivered via the vendor's delivery person, the receiving agent may refuse the incorrect items, and must note all discrepancies on the delivery ticket before signing the freight bill or packing slip. The agency procurement representative must be notified of the problem immediately.

- If an entire order is received via common carrier and one item is incorrectly shipped, the receiving agent must:

    - Sign the freight bill as "Subject to Further Inspection" and obtain the carrier's driver’s signature (not initials);

    - Identify the incorrect items and note all discrepancies on the freight bill, Purchase Order, receiving report, and packing slip prior to forwarding to Accounting;

    - Provide the procurement representative with all documentation relative to the discrepancy; and

    - In any of the cases listed above, the vendor must be informed of all discrepancies by the receiving agency. The agency must contact the vendor to obtain instructions for returning the merchandise at the vendor's expense.

10.6.6. Shortages/Overages.

A shortage is not to be confused with a partial delivery. A partial delivery means the vendor has acknowledged further shipments will be forthcoming. A shortage occurs when the actual count is less than the number of units listed on the packing slip. An overage occurs when the actual count of a particular item is in excess of the number authorized on the Purchase Order or receiving documents.

- The receiving agent may accept a shipment with a shortage or overage. However, all discrepancies must be noted on the delivery ticket before signature. A file copy should be retained, if possible. This information must be noted on all receiving documents and in Edison.

- Contact the vendor for instructions to return the merchandise. Merchandise should be returned at the vendor's expense.

- If a shipment shortage occurs, advise the Central Procurement Office. The agency procurement representative will follow up for the shortage or cancel the outstanding balance for the particular item.

- If an overage occurs, advise the Central Procurement Office. The agency procurement representative will either accept the excess items for stock or return the overage to the vendor.

It is an acceptable industry practice to allow a ten percent (10%) delivery variance for some commodities (e.g. printing or yard goods). A short-run or overrun is acceptable within the variance and a Purchase Order Change is not required. However, the actual quantity received must be noted on all receiving documents for inventory and accounting purposes. Report all under shipments and over shipments in excess of the ten percent (10%) variance to the Central Procurement Office. The Central Procurement Office will advise of any proposed action, and a change order will be affected if necessary.

10.6.7. Damaged Goods.

All deliveries should be inspected for damaged goods. The following rules should apply to inspecting a delivery of goods for damage:

- Immediately upon delivery, the receiving agent shall examine all packages for visible or audible damage. If the entire shipment or majority of the shipment is apparently damaged, the receiving agent may refuse the shipment.

- If only one or a few items in an order are damaged and the shipment has been delivered by a vendor's delivery person, the receiving agent may refuse the one item. If only one item was damaged out of an entire shipment delivered by a common carrier (i.e. UPS), the agency should accept the shipment and note all damages on the delivery ticket or freight bill and receiving report unless instructed otherwise by the agency’s procurement representative.

- Any packages visibly damaged or suspected of concealed damages must be examined in the presence of the delivery driver to determine the condition of the contents within.

Note: damages in detail on the freight bill and in Edison. Sign and retain a copy of the freight bill and include the notation "SUBJECT TO FURTHER INSPECTION".

The delivery personnel must verify the notations and sign the agency copy with a full signature (no initials).

All deliveries must be inspected for concealed damages immediately.

- Freight on Board (FOB)-Agency means it is the vendor's responsibility to deliver procured items to the agency's dock unspoiled, undamaged, and at no additional cost to the agency, as stated in the contract. It is the vendor's responsibility to contact the vendor-selected carrier and request an Inspection Report whenever spoilage, pilferage, or damages occur.

- The receiving agent shall retain any damaged items and all packing materials at the location it was received. All damaged shipping containers must be kept for the carrier's claims examiner/adjuster.

- The agency procurement representative shall call the vendor immediately to report damaged materials. The agency procurement representative must confirm this contact in writing to the vendor and in Edison.

10.6.8. When Carrier Inspects Damaged Items.

The following procedures should be followed with respect to inspections by the carrier’s inspector:

- The receiving agent shall allow the carrier's inspector to physically examine the damaged items. Packing material for damaged items and the freight bill must be retained by the receiving agent.

- The receiving agent should read the carrier's Inspection Report before signing. The receiving agent should only sign the receiving agent is in agreement with the report's facts and conclusions.

- Unless repairs will be completely satisfactory, the receiving agent should request a replacement.

- The carrier's inspector will supply the receiving agent with a copy of the Inspection Report. The receiving agent shall retain a copy of the inspection report in the State Agency's files.

10.6.9. After Carrier Inspection.

The receiving agent should follow the following procedure after carrier inspection:

- The agency must retain the damaged item and packaging until written disposition is given by a carrier or vendor to use or dispose of them. A carrier may pick them up for salvage.

- If a carrier picks up damaged items, the State Agency shall secure and retain a receipt for those damaged items.

- Do not return damaged items to the shipper without written authorization from the vendor, or unless specifically authorized by the Central Procurement Office. Under the directive of the vendor, the State Agency must follow instructions as to returning procedures without cost to the State Agency.

10.6.10. Receipt of Goods when a Purchase Order Receiving Record is not available.

The following procedure should apply when a purchase order receiving record is not available:

- If the Purchase Order number is not referenced on the delivery documents, it is the carrier's responsibility to call the shipper and obtain the required information.

- If a receiving record is not found in the pending receiving report file or in Edison, it may indicate an emergency telephone order. Contact your agency procurement representative for a determination of the validity of shipment and authorization to accept merchandise. Provide details such as quantity and specifications. In Edison, document the date and time of authorization to accept delivery and the name of the person providing such authorization. If a purchase cannot be verified, it is considered an unauthorized delivery and must be refused.

10.6.11. Duplicate Shipments.

The following procedure should apply when a receiving agent is in receipt of duplicate goods:

- When the receiving record in Edison indicates the goods on the purchase order were previously received, the receiving agent must contact the Central Procurement Office.

- In the event of a duplicate shipment, the Central Procurement Office shall authorize the receiving agent to refuse delivery. The Central Procurement Office or the receiving agent must advise the vendor that the State Agency has refused delivery and that the merchandise is being returned.

- If a duplicate shipment is inadvertently received, the State Agency must contact the vendor for return instructions.

- If a vendor refuses to accept a return, the State Agency must contact the Central Procurement Office for instructions and guidance.

10.6.12. Receipt of Unordered/Unidentified Parcels.

In the event a receiving agent is in receipt of goods that have not been ordered, the receiving agent should:

- Open the package to determine if a packing list or invoice is available and the details to the order information.

- If no identifying information is found, contact the company that sent the goods to determine who originated the order.

- If it cannot be determined who ordered the goods, then return the merchandise to the vendor at the vendor's expense.

Note: Beware of fraudulent telephone solicitors who may ship unordered merchandise (e.g. office supplies or office machine products) to unsuspecting agencies. Verify in Edison that each incoming shipment has a legitimate Purchase Order number and was authorized prior to acceptance. If an unordered parcel is received, return the goods to the shipper. The acceptance and use of the material may result in the agency having to pay the invoice. Report suspected fraudulent shipments to the CPO.

10.6.13. Substitutions.

A substitution is defined as the manufacture or shipment of an item that materially conforms to or exceeds the specifications, but may be technically different from the item that is subject to the procurement. Substitutions must be equal to or less than the awarded price. Substitutions shall require the approval of the Central Procurement Office prior to shipment. Any delivered products that do not meet the specifications of the procurement will be returned to the vendor at the vendor's expense. When a shipment or product is returned, the vendor must make an immediate replacement with an acceptable replacement or the State may seek remedies for default. The brand name or model listed on the purchase order must be supplied by the vendor. Unauthorized substitutions shall be refused.

10.6.14. Miscellaneous Receiving Procedures.

Additional receiving procedures that a receiving agent should follow include:

- The State Agency is responsible for contacting the vendor to expedite an overdue shipment. If satisfactory service cannot be obtained, the receiving agent should contact the Central Procurement Office for assistance.

- The notation "SUBJECT TO FURTHER INSPECTION" shall accompany the receiving agent's signature on the freight bill/delivery document.

- Document and date all communications in Edison.

- If the item received has a service or parts manual, record the applicable Purchase Order number, date of receipt, model number, serial number, and initial the cover.

- Warranty cards must be promptly completed and mailed to the manufacturer.

- For perishable items, the receiving agent shall check spoilage and shelf-life dates. Advise the CPO if a vendor is supplying expired merchandise or if it is near expiration. Do not accept any merchandise with expired dates. Perishable items must be date stamped upon receipt to ensure rotation of stock.

- The receiving agent must promptly prepare the receiving record in Edison to eliminate delay in payment of vendors.

- Report damaged or pilfered shipments immediately to the vendor.

- Report every shipment which does not meet or appear to meet the requirements of the Purchase Order.

- Report every shipment of inferior or substandard merchandise regardless of the provisions of the Purchase Order.

10.7. *Bonds.*

The Central Procurement Office or a State Agency may require a bond to secure a respondent's response to a solicitation or a performance bond after contract award issued by a surety company licensed to do business by the State of Tennessee. When required, the amount of the bond shall be stated as a percentage of the contract price (but may not exceed 100 percent (100%) of the total contract price) and the amount may be reduced proportionately after contract award or performance under the contract moves forward successfully. All bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request. Personal checks shall not be acceptable in the place

of performance bonds. However, bank cashier's checks shall be accepted. An irrevocable letter of credit or a certificate of deposit, which shall be held by the CPO or Delegated State Agency from a State or national bank or a State or federal savings and loan association having a physical presence in Tennessee may be accepted by the CPO or Delegated State Agency in lieu of a performance bond, subject to approval of the terms and conditions of said irrevocable letter of credit or certificate of deposit.

10.8. *P-Card Purchases.*

The Department of General Services, Central Procurement Office, and the Department of Finance and Administration, Division of Accounts, shall maintain any statewide credit and debit card services contracts, which enable State Agencies to provide direct payment for goods, services, and State travel. State Agencies must utilize these statewide contracts when seeking credit and debit card services. Agencies are prohibited from developing alternative contracts or submitting applications outside of these contracts for payment card services. If an Agency requires services not available from a current contract, such Agency shall consult with the Central Procurement Office to determine if a separate procurement for such services is necessary.

Except for purchases of equipment that require tagging under the Department of Finance and Administration's policies, the Central Procurement Office's payment card program shall be the primary method of payment for purchases made pursuant to an Agency's small purchase authority. Under Tenn. Code Ann. § 12-3-503(b) and CPO Policy Number 2013-003, any State Agency may use its small purchase authority to make a purchase without soliciting quotes or proposals from multiple suppliers if the total value of the purchase is ten thousand dollars ($10,000) or less. Agencies shall not artificially divide transactions or accounts to constitute a small purchase. Agencies shall comply with all applicable Central Procurement Office Rules and Policies when utilizing a payment card for a purchase. Purchases of equipment that require tagging under the Department of Finance and Administration's policies require the prior approval of the Department of Finance and Administration, Division of Accounts, as the business owner of the Asset Management Module.

Each Agency shall select an employee to serve as the "designated agency coordinator" for its payment card program. The coordinator shall assist the agency fiscal officer in providing day-to-day oversight of the Agency's payment card use, in accordance with the payment card procedures established by the Central Procurement Office.

The Central Procurement Office will utilize electronic reporting and centralized payment for all credit and debit card vendors. Agencies shall be responsible for reconciling monthly payment card reports to agency transactions.

An Agency may grant an exception to payment card use if a business refuses to accept a payment card or use of the payment card is otherwise impractical. Any other exceptions to this Section shall be approved by the Chief Procurement Officer.

11. Templates and Models.

Procurement professionals should utilize applicable templates and models when drafting procurement documents generated outside of the *Edison* system. When applicable, the templates must be utilized and deviations from the templates shall require an approved Rule Exception Request by oversight examiners. When a Rule Exception Request is not applicable, a written explanation for the deviation shall be provided by the agency head. The models are intended to be used as helpful guides or minimum standards that may be modified as needed. All documents are available on the State Intranet website http://tn.gov/generalserv/cpo/sourcing//model.html. Procurement professionals should refer to the intranet site frequently to ensure that the most up-to-date template is being utilized and submitted for requisite approvals.

The Intranet website, models, and templates cited herein are incorporated by reference into this Procurement Procedures Manual as though set forth verbatim herein, and the below listing of available templates and models are for informational purposes only. Links to these templates and models are set forth below. Each of these templates and models is self-explanatory. All questions regarding use of these templates and models should be directed to Central Procurement Office staff. Any and all changes or modifications thereto are subject to review and recommendation by the Advisory Council and approval by the Procurement Commission.

- **APPROVAL REQUESTS**
  - Amendment Request
  - Contract Termination Request
  - eHealth Pre-Approval Endorsement Request (for service involving Medical/Mental Health-Related Professional, Pharmaceutical, Laboratory or Imaging)
  - HR Pre-Approval Endorsement Request (for service involving State Employee Training, except that pursuant to an IT system contract, service relating to the employment of current or prospective State employees)
  - Limitation of Liability Request
  - OIR Pre-Approval Endorsement Request (for service involving Information Technology)
  - Rule Exception Request (Deviations from model language that are not specifically permitted by relevant regulations or instructions may require an approved written exception. The properly completed request must be signed and dated by the

contracting agency head (or authorized signatory) and submitted to the CPO. If approved, the CPO will return the documentation that contracting staff must later submit along with procurement documents for approval)
    - Solicitation Cancellation Request
    - Special Contract Request

- **SOLICITATION TEMPLATES, MODELS & RELATED DOCUMENTS**
    - Small Purchases Model
    - Informal Purchases Model
    - Request for Information (RFI) Model
    - Request for Qualifications (RFQ) Template
    - RFP & Related Documents:
        - Request for Proposals (RFP) Standard Template
        - RFP Amendment Template
        - RFP Evaluation Notice Model
        - RFP Process Protest Bond Model
        - RFP Release Notice Model
    - Solicitation Development Conflict of Interest Disclosure Model
    - Solicitation Evaluation Confidentiality and Conflict of Interest Disclosure Model

- **CONTRACT TEMPLATES**
    - Contract Amendment Template (requiring State expenditures, no-cost, or revenue)
    - Contract Templates Requiring State Expenditures (by contractor type):
        - All Contractors (except a TN or federal government) (FA)
        - Tennessee Local or Federal Government (GU)
        - U.S. Geological Survey (GU-USGS)
    - No Cost Contract Templates (by contractor type):
        - All Contractors (except a TN or federal government) (NC)
        - Tennessee Local or Federal Government (GU-NC)
    - Revenue Contract Templates (by contractor type):
        - All Contractors (except a TN or federal government) (RV)
        - Tennessee Local or Federal Government (GU-RV)

- **GRANT TEMPLATES**
    - Grant Amendment Template (Cost-Reimbursement or Endowment Grant)
    - Cost-Reimbursement Grant Templates (by grantee type):
        - All Grantees (except a TN or federal government) (GR)
        - Tennessee Local or Federal Government (GG)
    - Endowment Grant (GE) Template

- **INTERAGENCY MODELS**
  - Interagency Agreement (IA) Model
  - Interagency Grant Agreement (IG) Model

- **DELEGATED AUTHORITY TEMPLATES**
  - Delegated Authority Amendment Template
  - Authorization to Vendor Delegated Purchase Authority (DPAV) Template
  - Delegated Grant Authority (DG) Template
  - Delegated Loan Authority (DL) Template
  - Delegated No Cost Contract Authority (DN) Template
  - Delegated Purchase Authority (DP) Template
  - Delegated Purchase Authority for Court Reporting Service (DPCR) Template
  - Delegated Revenue Contract Authority (DR) Template
  - Special Delegated Authority for Funding Award (DA) Template
  - Special Delegated Authority for Declared Disaster (TEMA use only) Template

- **OTHER GENERAL MODELS & ADMINISTRATIVE DOCUMENTS**
  - Conflict of Interest – Annual Attestations
  - Contract Approval – Agency Legal Certification Model
  - Contract Approval – Small Agency Certification
  - Edison Record Status Reset Request
  - Employer/Employee Analysis Guidelines
  - HIPAA Business Associate Agreement Example
  - "Notwithstanding" Language
  - Service Contracts Coordinator Designation
  - Signature Certification & Authorization

Related Statutes, Rules or Policies.

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

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

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

Tenn. Comp. R. & Regs. 0620-03-03

Tenn. Comp. R. & Regs. 0690-03-01 and 0690-03-02

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

Central Procurement Office Procurement Methods Policy and Procedures

Central Procurement Office Non-Competitive Procurement Policy and Procedures

Central Procurement Office Contract Management Policy and Procedures

Central Procurement Office Certification of Goods and Services Recommended by the Central Nonprofit Agency or TRICOR Policy and Procedures

Central Procurement Office Authority Delegation Policy and Procedures

Central Procurement Office Subrecipient Uniform Reporting, Cost Allocation Plans, and Monitoring Policy and Procedures

Central Procurement Office Energy Efficiency Standards and Life Cycle Costing Policy and Procedures

Central Procurement Office Business Conduct and Ethics Policy and Procedures