



STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES

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STEVEN G. CATES  
COMMISSIONER

BILL HASLAM  
GOVERNOR

**AGENDA**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #004**  
**WEDNESDAY, APRIL 9, 2012 – 10:30 AM**  
**TN TOWER – 3<sup>RD</sup> FLOOR - DAVIDSON ROOM**

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- I. Final Edits to Proposed Communications and Negotiations Policy
  
  
- II. Other business

**CENTRAL PROCUREMENT OFFICE**

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STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES  
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MINUTES  
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #003  
WEDNESDAY, MARCH 28, 2012 – 1:00 P.M.  
TN TOWER – 3<sup>RD</sup> FLOOR – CHEATHAM ROOM

Members in Attendance:

Jessica Robertson, Sondra Howe, Kelly Smith, Buddy Lea, Jason Mumpower, Melissa Kmiecik, Hugh Holt, Jay Garrison, Steve Hillis

Others in Attendance:

Steve Cates, Melinda Parton, Thad Watkins, Mike Perry, Toni Stuart, Marcy Damon, James Reyes, Shay Oliphant, Charlotte McKinney (State of Tennessee); Paul Krivacka, Adams and Reese, LLP, and public attendees

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

**Minutes from January 18, 2012 Meeting:** Jessica stated that the minutes from the January 18, 2012 meeting had been sent to all Advisory Council on State Procurement (Advisory Council) members for their review and approval. A motion was made by Buddy Lea, Assistant Commissioner, Department of Finance and Administration, and seconded by Jason Mumpower, Executive Assistant to the Comptroller, to accept the minutes as submitted. All members voted in favor – none opposed.

**I. Proposed Communications and Negotiations Policy Change:** Jessica thanked the subcommittee members who met on Friday, March 23, 2012, to review and discuss the Communications and Negotiations policy (Policy). She stated that this Policy was crafted to clarify and negotiate pricing as well as the technical side of proposals (including RFPs). The subcommittee recommended some changes to the Policy that are shown in red on Attachment I.

Jessica opened the floor for discussion of the proposed Policy. Jason Mumpower said that he had prepared some comments on the Policy and distributed copies to Advisory Council members (Attachment II) for their review. He stated that most of the comments were self-explanatory. He asked everyone to note the fourth comment box on the document (Comment WU4) and mentioned that the same comment was cited several times further down in the document as well. Tennessee Code Annotated 4-56-105(5)

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states that delegation of authority by the Chief Procurement Officer requires approval by the Comptroller; therefore, he recommends removing the phrase “or delegated state agency” due to too much risk. He then asked Melinda Parton, Director of Management Services, Comptroller of the Treasury, to discuss the other recommended changes.

Melinda stated that the Policy was very well written overall. She briefly reviewed the Comments as shown on Attachment II. In regard to Comment WU8 on page two, she stated they were concerned with the sentence “Negotiations shall be conducted with proposers having a reasonable chance for award”. The term “reasonable chance” is of concern because we would need to establish a reason why they would not continue with negotiations. We may not continue negotiations with every proposer because there may not be a need to, but they may still be in the process. She said the wording should be changed but was not exactly sure what would be best. She asked the Advisory Council for their input regarding the language that should be substituted. Paul Krivacka, currently with Adams and Reese, LLP, suggested using the phrase “competitive range”. At this point, Jessica stopped the discussion to introduce Paul as the new Category Management/Legal Team Director for the Central Procurement Office. He will start his employment with the State of Tennessee on Monday, April 2, 2012. She also introduced Shay Oliphant as the new Director of Sourcing for the Central Procurement Office. Resuming the Policy discussion, Melinda indicated that using the phrase “competitive range” would be acceptable. She then referenced Comments WU9 and WU10 and stated the reasons for recommending they be changed as shown on Attachment II.

Buddy Lea stated that he struggled with using the words “responsive and responsible” bidders in the Policy (first paragraph under Policy and Procedure) so as not to exclude any bidders who may be technically non-responsive. A short discussion was held and it was agreed by the Advisory Council that it is acceptable to have the Policy state “. . . responsive and responsible proposers. . .”

Jason Mumpower made a motion to adopt the Policy with the changes discussed and as reflected in the Comments shown on Attachment II. The motion was seconded by Kelly Smith, Assistant Commissioner, Department of General Services. All members voted in favor – none opposed.

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

- II. Update on Common form for businesses to submit for procurement opportunities with government agencies:** A subcommittee was formed to review this issue and Hugh Holt, Purchasing Director, Knox County Government, gave a report of their findings. The subcommittee prepared a memorandum to the full Advisory Council (Attachment III) stating the reasons why they feel that this is not a viable project at this time. He said if the State ever decided to replace Edison, then it may be an option at that time.

Jason Mumpower made a motion to accept the report as presented. The motion was seconded by Sondra Howe, Department of Military. All members voted in favor – none opposed.

**III. Proposed Legislation Changes:** Jessica shared with the Advisory Council that the proposed legislation discussed at the January 18, 2012, Advisory Council meeting was signed by the Governor on Tuesday, March 27, 2012, with an effective date of April 1, 2012.

**IV. Other Business:** Jessica announced that she would like to develop a formal subcommittee of the Advisory Council to review future policies. She opened the floor for volunteers and the following members indicated they would be willing to serve:

Steve Hillis  
Jason Mumpower  
Melissa Kmiecik  
Hugh Holt  
Kelly Smith  
Sondra Howe  
Buddy Lea  
Jay Garrison

Due to the number of volunteers, it was agreed that they could serve in a pool of members to be called upon as needed for policy subcommittees. If any council member not in attendance would like to volunteer to serve in this pool, please contact Charlotte McKinney, Executive Administrative Assistant, Central Procurement Office.

Steve Hillis asked Jessica how she sees this Advisory Council handling policy review as far as getting it to legislation. She indicated that if the Central Procurement Office initiates the policy, it will be brought before the Advisory Council very early in the process. If the policy initiates from another department/agency, then the Advisory Council Chair will call a meeting at the point that we are notified. She indicated that timing is critical and that we would have to call meetings on short notice sometimes. Kelly Smith and Jason Mumpower emphasized that it is not in the best interest of the Council to review all bills (120+) and that a judgment call would be required. Steve had questions regarding a particular bill that was related to procurement. Jason Mumpower said that it was a Comptroller bill and he would be happy to discuss with Steve outside of the Council meeting. Thad Watkins, Legal Counsel, Department of General Services, added that the bill refers only to local government and not state government. Jessica reminded the Council that it will only consider policies that pertain to state government.

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

Attachments

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

Effective: Upon passage by the Procurement Commission

Prepared by: Tennessee Department of General Services, Central Procurement Office

**Purpose**

To establish a consistent, equitable process for communicating, clarifying and negotiating with proposers viable for contract award during the procurement solicitation and contract finalization phases.

**Scope**

This policy applies to all procurements and resulting contracts where the solicitation and award are conducted by the Department of General Services, Central Procurement Office or a state agency with delegated purchasing authority from the Chief Procurement Officer.

**Definitions**

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

“Procurement” - means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration [Tenn. Code Ann. §4-56-101(6)];

“Proposer” - includes a “bidder” or “proposer” that is a legal entity that has properly registered as required by the state. The terms “bidder” and “proposer” may be used interchangeably for the term “proposer” [Tenn. Code Ann. §4-56-101(7)];

“Responsible bidder” – means a person who has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance [Tenn. Code Ann. §12-3-201(6)]; and

“Responsive bidder” – means a person who has submitted a bid (proposal) which conforms in all material respects to the invitation to bid (Request for Proposal) [Tenn. Code Ann. §12-3-201(7)].

**Policy and Procedure**

All communications, clarifications and negotiations shall be conducted in a manner that supports a transparent competitive procurement process. As appropriate, solicitations should document a statement concerning whether negotiations may be conducted with responsible proposers who submit proposals determined to have a reasonable chance of being selected for award. The Central Procurement Office, or delegated state agency, shall assign and maintain a single point of contact for proposers throughout the

procurement process. All communications, clarifications and negotiations shall be memorialized in writing and maintained in the procurement file. Documentation to the procurement shall include:

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

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

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

### **Related Rules and Policies**

Rule 0620-3-3-.03(2)(i)

Policy .03a-11

### **Approval Signature**

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Jessica Robertson, Chief Procurement Officer

## Communications and Negotiations Policy

Effective: Upon passage by the Procurement Commission

Prepared by: Tennessee Department of General Services, Central Procurement Office

### Purpose

To establish a consistent, equitable process for communicating, clarifying and negotiating with proposers viable for contract award during the procurement solicitation and contract finalization phases.

Comment [WU1]: Recommend changing to "that are responsive and responsible and can continue in the process "

### Scope

This policy applies to all procurements and resulting contracts where the solicitation and award are conducted by the Department of General Services, Central Procurement Office or a state agency with delegated purchasing authority from the Chief Procurement Officer.

Comment [WU2]: Too much risk for agencies to be delegated this authority right away, until such time that training can be provided and the process for negotiation described has been utilized by central staff enough to ensure consistent application of the process. Recommend removing this procurement method from use by agencies for now.

### Policy and Procedure

All communications, clarifications and negotiations shall be conducted in a manner that supports a transparent competitive procurement process. As appropriate, solicitations should document a statement concerning whether negotiations may be conducted with responsive and responsible proposers who submit proposals determined to have a reasonable chance of being selected for award. The Central Procurement Office or delegated state agency, shall assign and maintain a single point of contact for proposers throughout the procurement process. All communications, clarifications and negotiations shall be memorialized in writing and maintained in the procurement file. Documentation to the procurement shall include:

Comment [WU3]: Suggest "reasonable chance" be changed to be based on criteria provided to all proposers upon the issuance of the procurement document in determining who would continue to the negotiations stage.

Comment [WU4]: Recommend removing for now. Too much risk.

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

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

Comment [WU5]: Recommend removing for now. Too much risk.

Comment [WU6]: Recommend removing for now. Too much risk.

Comment [WU7]: Recommend removing for now. Too much risk.

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

**Comment [WU8]:** Suggest "reasonable chance" be changed to be based on criteria provided to all proposers upon the issuance of the procurement document in determining who would continue to the negotiations stage.

**Comment [WU9]:** Recommend changing to "budget considerations." Availability can be interpreted to mean we will target pricing up the available budget.

**Related Rules and Policies**

Rule 0620-3-3-.03(2)(i)

Policy .03a-11 and

Rule 0690-3-1-.05(1)

Policy and Procedures 10.2

**Comment [WU10]:** Recommend that the current policies and procedures documents be marked for change and presented to the Procurement Commission for final approval. These documents are the reference points for all policies and procedures and any changes should be reflected in these documents.

**Approval Signature**

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Jessica Robertson, Chief Procurement Officer

[Advisory Council on State Procurement Comment:](#)



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**MEMORANDUM**

**TO:** The Advisory Council on State Procurement

**FROM:** Subcommittee on Common Bidder/Vendor Registration Form  
(Hugh Holt, Melissa Kmiecik, Matt Thompson, Mike Perry)

**DATE:** March 20, 2012

**SUBJECT:** Universal Bidder/Vendor Application for Tennessee Political Subdivisions

On December 20, 2011, State Representatives Bill Dunn and Harry Tindell formally requested that Jessica Robertson, Chief Procurement Officer, evaluate the possibility of a common bidder/vendor registration form for businesses to complete that any governmental agency could accept. A subcommittee was formed to study the concept and report back to the full Advisory Council on State Procurement (Council). The subcommittee consisted of Hugh Holt, Melissa Kmiecik, Matt Thompson, and Mike Perry.

Research into the development of a universally accepted application to register bidders/vendors for political subdivisions has identified few public sector jurisdictions employing this methodology. Four states; North Carolina, Georgia, Arizona, and Virginia have attempted to standardize the process. However, only two, Arizona and Virginia, have viable programs and both charge an annual fee to vendors for registration to fund the program. The subcommittee feels that a "pay to play" program would result in many vendors declining to register to do business with governmental entities in Tennessee and would particularly have a detrimental effect on minority-owned, woman-owned, service-disabled veteran-owned and small businesses.

The Tennessee Municipal League was contacted to determine if they knew anyone utilizing such an application or had any interest in pursuing such a process. They did not know of any such utilization and declined to involve themselves in such a project. We also contacted the Tennessee County Services Association with the same questions. Executive Director David Seivers stated that in talking to his members, some were actually opposed to the idea because "they feel, unlike the state, they are set up differently with different operational and legal powers for various justifiable reasons". He went on to quote a member, "I don't know how ONE (1) application could serve every entity throughout the state ... too many variables and different legal opinions... also we have different budget accounts and laws that play into the equation".

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While it would appear to be an advantage to the bidder/vendor community, the concept presents numerous obstacles:

- Infinitely variable local ordinances, policies, and procedures
- Widely differing requirements for information and no clear way to update or maintain
- No central database
- No universal classification code for tying goods and services to a particular supplier
- Lack of support from local government
- Philosophical opposition to a fee structure to fund the initiative

It is the recommendation of the subcommittee that the Council notify Representative Dunn and Representative Tindell that after careful study, the adoption of a universally accepted bidder/vendor registration application is not feasible at this time.