G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Minimum Requirements for Approval of Public Schools
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302
EFFECTIVE DATES:	March 31, 2014 through June 30, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule reflects a change in policy made by the Board in 2009 that requires an end of course test grade to count as a percentage of the student's second semester average, rather than the student's course average.

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

Not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

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For Department of State Use Only

Sequence Number: 10-05-13
Rule ID(s): 5588
File Date: 10/7/13
Effective Date: 3/31/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	**Rule Title**
0520-01-03-.06	Graduation, Requirement E

Minimum Requirements for the Approval of Public Schools
0520-01-03 -.06(2)(d)
Amendment

(d) Examinations.

1. End-of-course examinations will be given in English I, English II, English III, Algebra I, Geometry, Algebra II, U.S. History, Biology I, Chemistry and Physics. Further, the results of these examinations will be factored into the student's grade at a percentage determined by the State Board of Education in accordance with T.C.A. §49-1-302.

2. Students would not be required to pass any one (1) examination, but instead would need to achieve a passing score for the course average in accordance with the State Board of Education's uniform grading policy. The weight of the end-of-course examination on the ~~student's course average~~student's second semester average is as follows for entering ninth (9th) graders:

   (i) Fall of 2009 and 2010 – twenty percent (20%);

   (ii) Fall of 2011 and 2012 – twenty-five percent (25%); and

   (iii) Fall of 2013 and thereafter - twenty-five percent (25%).

3. In compliance with federally agreed upon indicators, end-of-course examinations aligned with students' programs of study will be given in Career and Technical Education program areas beginning with the Spring of 2010.

   (i) End-of-course examinations aligned with the capstone courses of students' programs of study will be given in the Career and Technical Education program areas of Health Science Education and Marketing Education beginning with the Spring of 2010 in compliance with federally agreed upon indicators. The Health Science tests will be in the courses Health Science Anatomy & Physiology Diagnostic Medicine, Health Informatics, Support Services, and Nursing Education. The Marketing tests will be given in Marketing II, Advertising & Public Relations, Sales Management, Market Research & Analysis, Retail Operations, and Services Marketing.

   (ii) Students would not be required to pass any one (1) examination, but instead would need to achieve a passing score for the course average in accordance with the State Board of Education's uniform grading policy. The weight of the Career and Technical Education end-of-course examinations on the ~~student's course average~~student's second semester average is as follows:

      (I) fall of 2009 and 2010 - twenty percent (20%);

      (II) fall of 2011 and 2012 - twenty-five percent (25%); and

      (III) fall of 2013 and thereafter - twenty-five percent (25%).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice				X	
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/26/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 9-9-13

Signature: Gary Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director

PHYLLIS E. CHILDRESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

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

Notary Public Signature: Phyllis E. Childress

MY COMMISSION EXPIRES January 9, 2016

My commission expires on:

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

Robert E. Cooper, Jr.
Attorney General and Reporter

9-25-13
Date

Department of State Use Only

Filed with the Department of State on: 10/7/13

Effective on: 3/3/14

Tre Hargett
Secretary of State

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2013 OCT -7 PM 2:23

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Department of Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Occupational Safety and Health Standards for General Industry, Construction, and Agriculture
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-3-1411, 50-3-103, 50-3-201
EFFECTIVE DATES:	March 31, 2014 through June 30, 2014
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	The proposed amendments to rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01, and 0800-01-07-.02, would adopt and reference the latest occupational safety and health standards and exceptions in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register.

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

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule does not have a projected impact on local governments.

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Sequence Number: 10-15-13
Rule ID(s): 5589-5591
File Date: 10/16/13
Effective Date: 3/31/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	**Rule Title**
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	**Rule Title**
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	**Rule Title**
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2013" to "January 1, 2014".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~July 1, 2013~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2014 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06

Rule 0800-01-006-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2013" to "January 1, 2014".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~July 1, 2013~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of January 1, 2014 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2013" to "January 1, 2014".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~July 1, 2013~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of January 1, 2014 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "July 1, 2013" to "January 1, 2014".

Existing Rule:

(1) As of ~~July 1, 2013~~, there are no exceptions.

Proposed Amended Rule:

(1) As of January 1, 2014, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 8-23-13 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

SHERYL MESSENGER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN

Date: 8-23-13

Signature: Burns P. Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

Subscribed and sworn to before me on: 8-23-2013

Notary Public Signature: Sheryl Messenger

My commission expires on: Jan 9, 2016

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

R E Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

9-25-13
Date

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

Effective on: 3/31/14

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Career and Technical Education
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-1-302, 49-2-301, 49-5-108 and Section 86 of Chapter 535 of the Public Acts of 1992.
EFFECTIVE DATES:	February 28, 2014 through June 30, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These proposed rules make two changes to language in Rules of the Tennessee State Board of Education. The first change addresses language related to licensure that more closely aligns with the 16 career clusters of the Division of Career and Technical Education (CTE) rather than the use of program area names according to which teachers have been licensed in more recent years. The Division has been shifting to the use of 16 career clusters, which are based on nationally recognized career clusters in career and technical education. This portion of the proposed item changes terms that referred to specific program areas to the career cluster areas that are now guiding the division's activities. The second change updates the term "vocational" to the more recent usage of "career and technical" in places in the Rules where that change had not already been made. One specific rule change pertains to the elimination of the CTE examination portion of graduation requirements [0520-01-03-.06(2)(d)] for the ninth grade class of 2009-10 and thereafter. This change is being proposed because assessment activities other than end-of-course tests were arranged for meeting the relevant federally mandated indicator.

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

Not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

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Sequence Number: 09-09-13
Rule ID(s): 5524-5529
File Date: 9/6/13
Effective Date: 2/28/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	9th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
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Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):
x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0520-01-02	Administrative Rules and Regulations
Rule Number	**Rule Title**
0520-1-2-.03	Employment Standards

Chapter Number	**Chapter Title**
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	**Rule Title**
0520-01-03-.05	State Curriculum, Requirement D

Chapter Number	**Chapter Title**
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	**Rule Title**

0520-01-03-.06	Graduation, Requirement E

Chapter Number	Chapter Title
0520-01-07	Career and Technical Education
Rule Number	**Rule Title**
0520-01-07-.02	Student Organizations
0520-01-07-.05	Summer Employment In Agricultural Education

Chapter Number	Chapter Title
0520-02-02	Career Ladder
Rule Number	**Rule Title**
0520-02-02-.09	Career Ladder Trade Shop Certificate

Chapter Number	Chapter Title
0520-02-03	Teacher Education and Licensure
Rule Number	**Rule Title**
0520-02-03-.01	Licensure, General Requirements
0520-02-03-.21	Effective Dates

Chapter Number	Chapter Title
0520-02-04	Licensure
Rule Number	**Rule Title**
0520-02-04-.13	Requirements for Occupational Education License

Rule 0520-1-2-.03 Employment Standards.

(9) Career and Technical Education.

(9) A teacher of agriculture, food, and natural resources shall have a valid Tennessee teacher license with appropriate endorsement

(10) A teacher of marketing shall hold a valid Tennessee teaching license with appropriate endorsement.

(11) A teacher of health science shall have completed one (1) year of successful employment experience, obtained through full-time or part-time status, within the past five (5) years in a related health occupation prior to teaching.

(12) Occupational educators shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state approved institution or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years with the exception of criminal justice in which case a bachelor's degree in criminal justice may count for four (4) years of paid or unpaid work experience or a master's degree or higher may be substituted for five years of paid or unpaid work experience.

~~(9) Career and Technical Education.~~

~~(a) A teacher of agricultural education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have appropriate work experience.~~

~~(b) A teacher of marketing education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have two (2) years of appropriate experience in marketing education.~~

~~(c) A teacher of health science education shall have completed three (3) years of successful employment experience as a registered nurse or in an allied health occupation within the seven (7) years prior to initial employment as a teacher.~~

~~(d) A teacher of trade and industrial education shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state technical institute, Tennessee Technology Center, or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years.~~

Rule 0520-1-2.03(10)(i)(3) Other Instructional and Related Personnel

An endorsement as a PreK-12 administrator or secondary supervisor or principal and completion of (by July 1, 2008 or within a three-year period from the date of employment) the required matrix of career and technical core competencies for professional development.

~~An endorsement as a PreK-12 administrator or secondary supervisor or principal and completion of (by July 1, 2008 or within a three-year period from the date of employment) the required matrix of vocational-technical core competencies for professional development.~~

Rule 0520-01-03-.05 State Curriculum, Requirement D. Framework of Standards for Honors Courses

Honors courses will substantially exceed the content standards, learning expectations, and performance indicators approved by the State Board of Education. Teachers of honors courses will model instructional approaches that facilitate maximum interchange of ideas among students: independent study, self-directed research and learning, and appropriate use of technology. All honors courses must include multiple assessments exemplifying coursework (such as short answer, constructed-response prompts, performance-based tasks, open-ended questions, essays,

original or creative interpretations, authentic products, portfolios, and analytical writing). Additionally, an honors course shall include a minimum of five of the following components:

(i) Extended reading assignments that connect with the specified curriculum.

(ii) Research-based writing assignments that address and extend the course curriculum.

(iii) Projects that apply course curriculum to relevant or real-world situations. These may include oral presentations, power point, or other modes of sharing findings. Connection of the project to the community is encouraged.

(iv) Open-ended investigations in which the student selects the questions and designs the research.

(v) Writing assignments that demonstrate a variety of modes, purposes, and styles.

(I) Examples of mode include narrative, descriptive, persuasive, expository, and expressive.

(II) Examples of purpose include to inform, entertain, and persuade.

(III) Examples of style include formal, informal, literary, analytical, and technical.

(vi) Integration of appropriate technology into the course of study.

(vii) Deeper exploration of the culture, values, and history of the discipline.

(viii) Extensive opportunities for problem solving experiences through imagination, critical analysis, and application.

(ix) Job shadowing experiences with presentations which connect class study to the world of work.

All course types which meet the above framework will be classified as honors, eligible for additional percentage point weighting.

Career and technical courses that offer a National Industry Certification through a nationally recognized examination may be weighted by adding 3 points to all grades used to calculate the semester average.

If honors courses and courses that offer National Industry Certification are offered, the local education agency shall annually approve the list of such courses. This list of National Industry Certification courses and of approved honors courses with a complete syllabus for each course shall be approved by the local education agency and made readily available to the public.

Each local education agency shall adopt policies for honors courses and career and technical courses that offer nation industry certification that may allow for the addition of 3 points to all grades used to calculate the semester average. ~~Honors courses will substantially exceed the content standards, learning expectations, and performance indicators approved by the State Board of Education. Teachers of honors courses will model instructional approaches that facilitate maximum interchange of ideas among students: independent study, self directed research and learning, and appropriate use of technology. All honors courses must include multiple assessments exemplifying coursework (such as short answer, constructed response prompts, performance-based tasks, open-ended questions, essays, original or creative interpretations, authentic products, portfolios, and analytical writing). Additionally, an honors course shall include a minimum of five of the following components:~~

~~(i) Extended reading assignments that connect with the specified curriculum.~~

~~(ii) Research-based writing assignments that address and extend the course curriculum.~~

~~(iii) Projects that apply course curriculum to relevant or real-world situations. These may include oral~~

~~presentations, power point, or other modes of sharing findings. Connection of the project to the community is encouraged.~~

~~(iv) Open-ended investigations in which the student selects the questions and designs the research.~~

~~(v) Writing assignments that demonstrate a variety of modes, purposes, and styles.~~

~~(I) Examples of mode include narrative, descriptive, persuasive, expository, and expressive.~~

~~(II) Examples of purpose include to inform, entertain, and persuade.~~

~~(III) Examples of style include formal, informal, literary, analytical, and technical.~~

~~(vi) Integration of appropriate technology into the course of study.~~

~~(vii) Deeper exploration of the culture, values, and history of the discipline.~~

~~(viii) Extensive opportunities for problem solving experiences through imagination, critical analysis, and application.~~

~~(ix) Job shadowing experiences with presentations which connect class study to the world of work.~~

~~All course types which meet the above framework will be classified as honors, eligible for additional percentage point weighting.~~

~~Technical courses that offer a National Industry Certification through a nationally recognized examination may be weighted by adding 3 points to all grades used to calculate the semester average.~~

~~If honors courses and courses that offer National Industry Certification are offered, the local education agency shall annually approve the list of such courses. This list of National Industry Certification courses and of approved honors courses with a complete syllabus for each course shall be approved by the local education agency and made readily available to the public.~~

~~Each local education agency shall adopt policies for honors courses and technical courses that offer national industry certification that may allow for the addition of 3 points to all grades used to calculate the semester average.~~

Minimum Requirements for the Approval of Public Schools
0520-01-03

Rule 0520-01-03-.05 State Curriculum, Requirement D. (6) Areas of Instruction

(h) General Education Exploratory Courses. Grades 6-12.
Classes in career and technical education may be offered and shall be based on the state curriculum standards. ~~Classes in business education, family and consumer sciences and technology education may be offered.~~

(j)(2) Grades 9-12. Classes in career and technical education may be offered and shall be based on the state curriculum standards. ~~Students who elect the technical preparation curriculum shall complete a four-unit program of study focusing on a particular technical area.~~

0520-01-03-.06 (1)

~~(1) Graduation Requirements—Effective through the 9th grade class of 2008-2009.~~

~~(a) High School Diploma, High School Certificate, and Special Education Diploma.~~

1. The high school diploma will be awarded to students who (1) earn the specified twenty (20) units of credit or satisfactorily complete an individualized educational program (IEP); (2) meet competency test or gateway examination standards; and (3) have satisfactory records of attendance and conduct.

2. The high school certificate may be awarded to students who have earned the specified twenty (20) units of credit and who have satisfactory records of attendance and conduct, but who have not met competency test or gateway examination standards.

3. The special education diploma will be awarded to students who have satisfactorily completed an individualized education program, and who have satisfactory records of attendance and conduct, but who have not met competency test or gateway examination standards.

(b) High School Diploma.

1. The following twenty (20) units shall be required for graduation for students who enter the ninth (9th) grade in 1994-95 and thereafter; students shall complete the core curriculum plus either the university preparation curriculum or the technical preparation curriculum.

Core Curriculum	Units
English Language Arts	4
Mathematics*	3
Science**	3
Social Studies***	3
Wellness	1
Total	14

* Students who enter ninth (9th) grade in 1994-95 and thereafter shall be required to achieve, by the time they graduate, at least one of the following: Algebra I, Technical Algebra (formerly Math for Technology II), or Integrated Mathematics I. Students who enter high school beginning in 2005-06 will also be required to complete one (1) of the following: Geometry, Technical Geometry, Algebra II, or Integrated Mathematics II as part of the three required units.

** One (1) of the three (3) science courses for students who enter ninth (9th) grade in 2001-02 and thereafter must be Biology I, Biology for Technology, or the equivalent in an integrated curriculum.

*** The social studies curriculum shall include United States History, World History/World Geography, Economics, and Government.

University Preparation Curriculum	Units
Foreign Language	2
Fine Arts	1
Electives	3
Total	6

Technical Preparation Curriculum	Units
Program of study focusing on a particular	4

~~technical area~~

~~Electives ..... 2~~

~~Total ..... 6~~

~~2. Students who have taken the equivalent of high school level courses may meet course requirements in accordance with local board of education policies permitting credit by examination.~~

~~(c) Graduation with Honors.~~

~~1. Students who graduate with a high school diploma may graduate with honors if they complete the core curriculum and either the university preparation curriculum or the technical preparation curriculum. School systems may specify additional requirements, such as requiring students to demonstrate performance of distinction in one (1) or more areas.~~

~~2. Students must achieve an overall grade point average of 3.0 or higher on a 4.0 scale.~~

~~(d) Examinations.~~

~~1. Competency test. A competency test shall be administered to all high school students. Achieving minimum standards on all required subtests shall constitute one (1) requirement for graduation with a high school diploma and graduation with honors. The test shall first be administered to students in the ninth (9th) grade. Students who fail to meet the minimum standards on any subtest shall be given the opportunity to be retested during any of the regularly scheduled administrations of the test. A student shall not be required to be retested on any subtest for which minimum standards on the competency test, proficiency test, or the competency/proficiency screening were previously achieved.~~

~~(i) Students must meet a minimum standard of seventy percent (70%) of the test items answered correctly on each of two (2) subtests: one (1) subtest to test competency in Mathematics and one (1) subtest to test competency in Language Arts.~~

~~(ii) Each local education agency shall provide research based academic interventions and require participation of students who have not met the minimum standard on either section of the competency test. At least one (1) intervention must be offered during the regular school day. All interventions shall be designed to meet the individual student's needs and shall be conducted by a teacher endorsed in the subject area.~~

~~(iii) Any student who previously received a special education diploma or a high school certificate regardless of the date of issuance may, at any time during a regularly scheduled administration of the competency test, take the competency test and upon passing the test be awarded a high school diploma.~~

~~2. Gateway examinations. Achieving minimum standards on three gateway examinations in Mathematics, English Language Arts, and Science shall constitute one requirement for graduation with a high school diploma and graduation with honors for students who enter the ninth (9th) grade in 2001-2002 and thereafter. Students who fail to meet the minimum standard on any gateway examination shall be given the opportunity to be retested during any of the regularly scheduled administrations of the examination. A student shall not be required to be retested on any gateway examination for which the minimum standard was previously achieved.~~

~~(i) Students must meet minimum standards for the gateway examinations as determined by the State Board of Education in Mathematics, English Language Arts, and Science.~~

~~(ii) Course work should be structured and scheduled to ensure that all students are successful. However, each local education agency shall provide research based academic interventions and require participation of students who have not met the minimum standard on any gateway examination. At least one (1) intervention must be offered during the regular school day. All interventions shall be designed to meet the individual student's needs, not simply repeating the course, and shall be conducted by a teacher endorsed in the subject area.~~

~~(iii) Any student who previously received a special education diploma or a high school certificate regardless of the date of issuance may, at any time during a regularly scheduled administration of the gateway examinations, take the gateway examinations and upon passing the exams be awarded a high school diploma.~~

~~(iv) Students who entered high school prior to or during the 2000-2001 school year may fulfill this requirement by meeting the minimum standards on the competency test until September 1, 2004, after which time the competency test will no longer be administered.~~

~~3. Optional exit examinations. Prior to graduation, all students shall have the opportunity to take an optional exit examination. No minimum score shall be required for this examination.~~

0520-01-03-.06(2)(b)3ii

Virtual Enterprise ~~Virtual Enterpsrise~~

0520-01-03-.06(2)(d) Examinations

3. ~~In compliance with federally agreed upon indicators, end of course examinations aligned with students' programs of study will be given in Career and Technical Education program areas beginning with the Spring of 2010.~~

~~(i) End of course examinations aligned with the capstone courses of students' programs of study will be given in the Career and Technical Education program areas of Health Science Education and Marketing Education beginning with the Spring of 2010 in compliance with federally agreed upon indicators. The Health Science tests will be in the courses Health Science Anatomy & Physiology Diagnostic Medicine, Health Informatics, Support Services, and Nursing Education. The Marketing tests will be given in Marketing II, Advertising & Public Relations, Sales Management, Market Research & Analysis, Retail Operations, and Services Marketing.~~

~~(ii) Students would not be required to pass any one (1) examination, but instead would need to achieve a passing score for the course average in accordance with the State Board of Education's uniform grading policy. The weight of the Career and Technical Education end of course examinations on the student's course average is as follows:~~

~~(I) fall of 2009 and 2010 – twenty percent (20%);~~
~~(II) fall of 2011 and 2012 – twenty five percent (25%); and~~
~~(III) fall of 2013 and thereafter – twenty five percent (25%).~~

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Career and Technical Education ~~Vocational Education~~
0520-1-7

0520-1-7-.02 Student Organizations

The following organizations serve as a support for the instructional curriculum in the following career clusters:

(1) Agriculture, Food, and Natural Resources: The Tennessee Association of FFA
(2) Marketing, Finance, and Business Management and Administration: DECA and Future Business Leaders of America
(3) Health Science: HOSA
(4) Education and Training and Human Services: Family, Career and Community Leaders of America
(5) Manufacturing, STEM, and Information Technology: Technology Student Association
(6) Architecture and Construction, Human Services, Transportation, Distribution and Logistics, Hospitality and Tourism, Law, Public Safety, Corrections, and Security, Arts, Audio/Visual Technology and Communications: SkillsUSA

~~The following organizations are integral parts of the instructional programs in the areas listed:~~

~~(1) Agriculture Education: The Tennessee Association of FFA~~
~~(2) Marketing Education: DECA~~
~~(3) Health Sciences Education: HOSA, Inc.~~
~~(4) Family and Consumer Sciences: Family, Career and Community Leaders of America~~
~~(5) Technology Engineering Education: Technology Student Association~~
~~(6) Business Technology Education: Business Professionals of America and Future Business Leaders of America~~
~~(7) Trade and Industrial Education: SkillsUSA~~

0520-1-7-.05

Summer Employment in Agriculture, Food, and Natural Resources ~~Summer Employment in Agriculture Education~~ To qualify for extended employment, an agriculture, food, and natural resources teacher shall devote a minimum of forty (40) eight-hour working days beyond the two hundred (200) day contract required by the state for a regular teacher ~~To qualify for extended employment, an agricultural education teacher shall devote a minimum of forty (40) eight-hour working days beyond the two hundred (200) day contract required by the state for a regular teacher.~~

Career Ladder
0520-02-02

0520-02-02-.09 Career Ladder Occupational Educator Certificates~~Career Ladder Trade Shop Certificate~~

(1) The occupational teacher may advance to career level I teacher provided that:

(a) The teacher has met all requirement for the issuance of the occupational license
(b) The teacher shall receive a positive recommendation on the local and state evaluations

(2) The occupational teacher may renew the career level I certificate provided that:

(a) The teacher continues to maintain the occupational license
(b) The teacher successfully completes one course from an approved industrial education program, or other secondary teacher training course offering through any approved teacher training institution
(c) The teacher received a positive recommendation on state and local evaluations

(3) The occupational teacher may advance to career level II provided that:

(a) The teacher has met experience requirements for career level II
(b) The teacher receives a positive recommendation on local and state evaluations

(4) The occupational teacher may review the career level II certification provided that:

(a) The teacher continues to maintain the occupational license
(b) The teacher successfully completes one course from an approved industrial education program, or other secondary teacher training course offering through any approved teacher training institution
(c) The teacher received a positive recommendation on state and local evaluations

(5) The occupational teacher may advance to career level III provided that:

(a) The teacher has met experience requirements for career level III
(b) The teacher receives a positive recommendation on local and state evaluations

(6) The occupational teacher may renew the career level III certification provided that:

(a) The teacher continues to maintain the occupational license
(b) The teacher successfully completes one course from an approved industrial education program, or other secondary teacher training course offering through any approved teacher training institution
~~(1)~~ The teacher received a positive recommendation on state and local evaluations ~~The trade and industrial teacher may advance to career level I teacher provided that:~~

~~(a) The teacher has met all requirement for the issuance of the trade shop license~~
~~(b) The teacher shall receive a positive recommendation on the local and state evaluations~~

~~(2) The trade and industrial teacher may renew the career level I certificate provided that:~~

~~(a) The teacher continues to maintain the trade shop license~~
~~(b) The teacher successfully completes one course from an approved industrial education program, or other secondary teacher training course offering through any approved teacher training institution~~
~~(c) The teacher received a positive recommendation on state and local evaluations~~
~~(3) The trade and industrial teacher may advance to career level II provided that:~~

~~(a) The teacher has met experience requirements for career level II~~
~~(b) The teacher receives a positive recommendation on local and state evaluations~~

~~(4) The trade and industrial teacher may review the career level II certification provided that:~~

~~(a) The teacher continues to maintain the trade shop license~~
~~(b) The teacher successfully completes one course from an approved industrial education program, or other secondary teacher training course offering through any approved teacher training institution~~
~~(c) The teacher received a positive recommendation on state and local evaluations~~

~~(5) The trade and industrial teacher may advance to career level III provided that:~~

~~(a) The teacher has met experience requirements for career level III~~
~~(b) The teacher receives a positive recommendation on local and state evaluations~~

~~(6) The trade and industrial teacher may renew the career level III certification provided that:~~

~~(a) The teacher continues to maintain the trade shop license~~
~~(b) The teacher successfully completes one course from an approved industrial education program, or other secondary teacher training course offering through any approved teacher training institution~~
~~(c)~~(a) ~~The teacher received a positive recommendation on state and local evaluations~~

0520-02-03-.01 (13)

Candidates seeking licensure and endorsement as an occupational education teacher shall complete successfully a teacher education program not to exceed eighteen (18) semester hours designed to meet the knowledge and skills for teacher preparation. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education. ~~Candidates seeking licensure and endorsement as a health science education teacher or as a trade and industrial education teacher shall complete a program of studies in professional education not to exceed 18 semester hours. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education.~~

0520-02-03-.21(1) Effective Dates

Endorsement Area	Effective Date Sept. 1	Superseded Date Aug. 31	Single Effective Date Column
Secondary Education: Career and Technical Education			
Agriculture Education 7-12			2009
Agriscience 7-12			2009
Business Education 7-12			2004
Business Technology 7-12			2004
Family and Consumer Sciences 5-12			2008
Food Production & Management Services 9-12			2008
Early Childhood Care and Services 9-12			2008
Technology Engineering Education			2005
Marketing Education 7-12			2010
Occupational Education			
Health Sciences Education 9-12			2002
Trade and Industrial Education 9-12			2002

Endorsement Area	Effective Date Sept. 1	Superseded Date Aug. 31
Secondary Education: Vocational Technical		
Agriculture Education 7-12	2009	
Agriscience 7-12	2009	
Vocational Agriculture	1994	2009
Agriscience 7-12	1994	2009
Business Education 7-12	2004	
Business Technology 7-12	2004	
Basic Business 7-12	1994	2004
Keyboarding 1-6 and 7-12	1994	2004
Shorthand	1994	2004
Data Processing	1994	2004
Office Technology	1994	2004
Family and Consumer Sciences 5-12	2008	
Food Production & Management Services 9-12	2008	
Early Childhood Care and Services 9-12	2008	
Consumer and Homemaking 5-12	1994	2008
Care/Guidance of Children 9-12	1994	2008
Food Management, Production & Svcs 9-12	1994	2008
Clothing Management, Production & Svcs 9-12	1994	2008
Technology Engineering Education	2005	

Technology Education 5-12	1994	2005
Marketing Education 7-12	2010	
Marketing 7-12	1994	2010
Occupational Education		
Health Sciences Education 9-12	2002	
Trade and Industrial Education 9-12	2002	

Licensure
0520-02-04

0520-02-04-.13 (1) (a) 1. Health Science~~Health Sciences Education~~

0520-02-04-.13 (1) (a) 2. Other Occupational Educator~~Trade and Industry~~

0520-02-04-.13 (1) (a) 2(i)

(i) Effective September 1, 2002, other occupational teachers shall hold and maintain a current industry certification, where available, in the specific endorsement area for which they are licensed. This Industry Certification may be acquired prior to Apprentice license, but must be presented at the time the teacher advances from Apprentice to Professional Occupational License.~~Effective September 1, 2002, trade and industry teachers shall hold and maintain a current industry certification, where available, in the specific endorsement area for which they are licensed. This Industry Certification may be acquired prior to Apprentice license, but must be presented at the time the teacher advances from Apprentice to Professional Occupational License.~~

0520-02-04-.13 (1) (a) 2(ii)
Endorsements in Other Occupational Education can be obtained through one of five different pathways using work experience, industry certification and postsecondary training. The five possible pathways are:~~Endorsements in Trade and Industrial Education can be obtained through one of four different pathways using work experience, industry certification and postsecondary training. The four possible pathways are:~~

0520-02-04-.13 (1) (a) 2. (iii)

An Other Occupational Education teacher shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test ~~A trade and industry teacher shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test.~~

0520-02-04-.13 (2) (a)

(a) Issuance of License

The teacher may advance to the professional occupational education license provided that he/she has completed the following requirements. Prior to the fourth year of teaching, the teacher shall provide to the Department of Education documentation that the following requirements have been met:

1. Attendance during the first year of teaching for a total of five (5) days at new teacher training sponsored by Career & Technical Education Division, Department of Education

2. Four (4) days release time to observe three (3) experienced teachers within their endorsed teaching area and one (1) experienced teacher outside of their teaching area.

3. Assigned teacher mentor during the first three (3) years of teaching.

4. Complete three (3) years of teaching in an approved school.

5. Receive a positive recommendation from the local education agency based on evaluation under a model approved by the State Board of Education.

6. Complete successfully a teacher education program of eighteen (18) semester hours designed to meet the knowledge and skills for teacher preparation. Candidates must be recommended by an institution of higher education with a preparation program approved according to standards and guidelines established by the State Board of Education. A teacher who meets all the knowledge and skills at the time of employment is exempted from these requirements.

7. Current/valid Industry Certification where required by teacher endorsement area.~~(a) Issuance of License.~~

~~The teacher may advance to the professional-occupational education license provided that he/she has completed the following requirements. Prior to the fourth year of teaching, the teacher shall provide to the Department of Education documentation that the following requirements have been met:~~

~~1. Attendance during the first year of teaching at a three (3) day seminar sponsored by Career & Technical Education, Division of Department of Education.~~

~~2. Attendance during the first year of teaching at a two (2) full day seminar sponsored by the Career & Technical Education, Division of Department of Education for new teachers.~~

~~3. Observation of experienced teachers in the teaching area during four (4) days of released time.~~

~~4. Assistance of a teacher mentor during the first three (3) years of teaching.~~

~~5. Complete three (3) years of teaching in an approved school.~~

~~6. Receive a positive recommendation from the local education agency based on evaluation under a model approved by the State Board of Education.~~

~~7. Complete successfully the teacher education program of eighteen (18) semester hours designed to meet the knowledge and skills for career and technical education teachers. A teacher who meets all the knowledge and skills at the time of employment is exempted from this requirement.~~

~~8. Industry Certification for Trade & Industrial Education instructors must also be submitted where required by teacher endorsement areas~~

0520-02-04-.13(2)(c) (3) (ii)

All applicants for cosmetology, barbering, and health science must also submit proof they hold a current state license to practice that profession.~~All applicants for cosmetology, barbering, and health occupations must also submit proof they hold a current state license to practice that profession.~~

0520-02-04-.13(2)(c)(3)(iii)

Industry Certification for other occupational educators must also be submitted where required by teacher endorsement area. ~~Industry Certification for Trade & Industrial Education instructors must also be submitted where required by teacher endorsement area.~~

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Wildlife Resources Agency
DIVISION:	Boating and Law Enforcement
SUBJECT:	Operation of Vessels on Old Hickory Lake
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-208 and 69-9-209
EFFECTIVE DATES:	October 2, 2013 through March 31, 2014
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	The emergency rule prohibits vessels from entering the discharge channel at the TVA Fossil Plant near the Cumberland River Mile (CRM) 243 as marked by informational buoys and barrier floats. TWRA states the purpose of the emergency rule is safety around construction activities, including constructing new scrubbers and selective catalytic reduction systems at Gallatin to comply with EPA's new Mercury and Air Toxic regulations and TVA's Environmental Agreements with EPA and others, and construction of a new hatchery for TWRA.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The Commission is not aware of any projected financial impacts on local governments.

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For Department of State Use Only

Sequence Number: 10-02-13
Rule ID(s): 5585
File Date (effective date): 10/2/13
End Effective Date: 3/31/14

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Boating & Law Enforcement
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Rule Type:
X Emergency Rule

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Statement of Necessity:
Pursuant to T.C.A. §4-5-208 and T.C.A. §69-9-209, the Tennessee Fish and Wildlife Commission is promulgating this emergency rule regarding operation of vessels on the Cumberland River, specifically the TVA Fossil Plant discharge channel near Cumberland River Mile (CRM) 243. This rule is necessary to insure the safety of recreational boaters and their equipment as well as the safety of TVA workers and TVA equipment.
TVA is constructing new scrubbers and selective catalytic reduction systems at Gallatin to comply with EPA's new Mercury and Air Toxic regulations and TVA's Environmental Agreements with EPA and others. The new scrubbers at Gallatin will be located across the discharge channel from the existing plant requiring construction of a bridge across the discharge channel to tie the duct plenum on the powerhouse side to the scrubber duct above the new access road on the opposite side.
Construction of the bridge and duct (plenum - access road) will involve the lifting of materials over the discharge channel. Prudent safety precautions require that no persons be allowed under the load to avoid the potential of injury if the load should fall. Further, since the construction is over water, if something falls it could present a hidden danger if it is submerged underwater.
TVA will also be constructing a new hatchery for TWRA operation beginning in 2013 and completing in 2014. Hatchery activities will include construction of discharge waterways from the hatchery to the discharge channel and setting of pumps in the discharge channel. The public would also need to be restricted from being within harm's way while these activities are in-progress.
This emergency rule would provide statutory authority to exclude boats from entering the work zone. TVA plans to begin construction in November of 2013 and finish by the spring of 2016. The Commission feels that the normal rulemaking process would not provide the immediate safeguards sought by TVA. Therefore, the Tennessee Fish and Wildlife Commission feels the adoption of an emergency rule is justified and necessary.

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

Chapter Number	Chapter Title
1660-02-07	Rules and Regulations Governing Operations of Vessels
Rule Number	**Rule Title**
1660-02-07-.04	Old Hickory Lake

Rulemaking Hearing Rules of the
Tennessee Wildlife Resources Agency

Rule Chapter 1660-02-07
Rules and Regulations Governing Operations of Vessels

Emergency Rule

Rule 1660-02-07-.04, Old Hickory Lake, is amended by adding a new paragraph (21) which shall read as follows:

(21) Vessels are prohibited from entering the discharge channel at the TVA Fossil Plant near Cumberland River Mile (CRM) 243 as marked by informational buoys and barrier floats.

Authority: T.C.A. §69-9-209. Administrative History: Original rule certified May 8, 1974. Amendment filed May 28, 1975; effective June 28, 1997. Amendment filed February 6, 1978; effective March 8, 1978. Amendment filed July 2, 1979; effective August 16, 1979. Amendment filed August 1, 1990; effective September 15, 1990. Amendment filed April 26, 2013; effective July 25, 2013.

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

Board Member	Aye	No	Abstain	Absent
Jeff McMillin	✓			
Jim Bledsoe	✓			
Harold Cannon	✓			
Bill Cox	✓			
Jeffrey H. Griggs	✓			
Tom Rice	✓			
Jim Ripley				✓
Julie Schuster	✓			
Clayton Stout	✓			
James Stroud	✓			
Trey Teague	✓			
David Watson	✓			
Jamie Woodson				✓

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 9-24-13

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 9-24-13

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

Robert E. Cooper, Jr.
Attorney General and Reporter

10-1-13
Date

Department of State Use Only

Filed with the Department of State on: 10/2/13

Effective for: 180 *days

Effective through: 3/31/14

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

Tre Hargett
Secretary of State

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2013 OCT -2 AM 11:35

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Higher Education Commission
SUBJECT:	Higher Education Tuition Discounts
STATUTORY AUTHORITY:	Tenn. Code Ann. Section 49-7-119, Public Chapter 345 of the Acts of 2013.
EFFECTIVE DATES:	March 31, 2014 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This proposed rule amendment extends the twenty-five percent tuition discount available at state institutions of higher education for children of state employees who retire with at least 25 years of service to children of retired school teachers that have either (1) thirty years of service in public schools, or (2) received disability retirement after twenty-five years of service in public schools as required by Public Chapter 345 of the Acts of 2013.

Regulatory Flexibility Addendum

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

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rules

The Tennessee Higher Education Commission (THEC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing amending Chapter 1540-01-05 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees. It is the intent of THEC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Consistent with the terms of 2013 Public Acts, Chapter 345, the proposed rules allow children of retired teachers to receive a twenty-five percent tuition discount at state-operated institutions of higher learning, provided that the child is under twenty-four (24) years of age. Eligibility for the discount requires that the parent retired with thirty (30) years of full-time creditable service in Tennessee public schools, or received disability retirement after a minimum of twenty-five (25) service years.

The rules currently allow for children under twenty-four (24) years of age whose parent is employed as a full-time certified teacher in any public school in this state to receive a twenty-five percent discount on tuition to any state operated institution of higher learning.

Regulatory Flexibility Analysis - Methods of Reducing the Impact of Rules on Small Businesses

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

3. Flexible compliance and/or reporting requirements for small businesses:

   The proposed rules were drafted to facilitate administration of the program for all Tennessee state public institutions of higher learning.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

   THEC has met with and provided a copy of these rules to the Tennessee Board of Regents and the University of Tennessee system. No comments or concerns regarding these rules or the schedules

and deadlines for compliance and/or reporting requirements have been expressed by any of these entities.

5. Consolidation or simplification of compliance or reporting requirements:

   The proposed rules were drafted to ensure solid, easily interpreted compliance and reporting requirements.

6. Performance standards for small businesses:

   As these rules apply to state operated institutions of higher learning the proposed rules will not affect small businesses.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Not Applicable. These rules affect only state operated institutions of higher learning.

2. Projected reporting, recordkeeping, and other administrative costs:

   There are no significant reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   Not Applicable. The proposed rules provide for a tuition discount available at state institutions to the children of current or retired teachers.

4. Less burdensome, intrusive, or costly alternative methods:

   As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

   There are no federal or state counterparts to the issues addressed by these proposed rules.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these proposed rules.

Impact on Local Governments

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

The rules for the Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees Chapter 1540-01-05, as proposed, shall have no projected impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
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For Department of State Use Only

Sequence Number: 10-18-13
Rule ID(s): 5593
File Date: 10/17/13
Effective Date: 3/31/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Higher Education Commission
Division:	Higher Education
Contact Person:	Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs
Address:	Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.741.7571
Email:	Scott.Sloan@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1540-01-05	Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees
Rule Number	**Rule Title**
1540-01-05-.01	Definitions
1540-01-05-.02	Eligibility
1540-01-05-.03	Limitations
1540-01-05-.04	Appeals Procedures
1540-01-05-.05	Repealed

RULES
OF
TENNESSEE HIGHER EDUCATION COMMISSION

CHAPTER 1540-01-05
PUBLIC HIGHER EDUCATION FEE DISCOUNTS FOR CHILDREN OF LICENSED PUBLIC SCHOOL TEACHERS AND STATE EMPLOYEES

TABLE OF CONTENTS

1540-01-05-.01 Definitions
1540-01-05-.02 Eligibility
1540-01-05-.03 Limitations
1540-01-05-.04 Appeal Procedures
1540-01-05-.05 Repealed

1540-01-05-.01 DEFINITIONS.

(1) Children under the age of twenty-four (24): Dependent children, twenty-three (23) years of age or younger, of certified public school teachers or employees of the State of Tennessee who are:

(a) The natural children or legally adopted children of the teacher or state employee.

(b) The stepchildren of the teacher or state employee living with the teacher or state employee in a parent/children relationship.

(c) Otherwise eligible and living in a parent/children relationship with the teacher or state employee, such as children of deceased parents who are being raised by a grandparent who is employed as a teacher or state employee.

(d) Children, as described in (a) through (c) above, of a teacher who died while employed as a public school teacher, and who are utilizing the benefit at the time of the parent/teacher's death.

(2) Certified teacher in any public school in Tennessee or Teacher: Teacher, supervisor, principal, superintendent, and other personnel who is licensed by the Tennessee Department of Education or by a branch of the U.S. Armed Forces to teach Reserve Officer Training Corps, and employed by any local school system, for service in public, elementary and secondary schools in Tennessee supported in whole or in part by state funds. This term shall also include technology coordinators employed by any local school system, for service in public secondary schools in Tennessee supported in whole or in part by state funds.

(3) Deceased state employee: Person who at the time of their death was a full-time employee of the State of Tennessee.

(4) Full-time teacher or Teacher: School employee whose position requires them to be on the job on school days throughout the school year at least the number of hours during which schools in the local board of education are in session.

(5) Full-time supervisors principal, superintendent, and other personnel: School employee who is licensed by the Tennessee Department of Education whose current assignments, regardless of their classification, requires his or her services each working day at least a number of hours equal to a regular working day.

(6) Full-time employee of the State of Tennessee: Employee of the executive, judicial or legislative branches of Tennessee state government:

(Rule 1540-01-05-.01, continued)

(a) classified as "full-time" and scheduled to work one thousand nine hundred and fifty (1,950) hours or more per fiscal year; or

(b) employees, regardless of classification, and scheduled to work one thousand six hundred (1600) hours per fiscal year and who receive employment benefits provided to all full-time employees.

(7) Maintenance fee: A fee charged to students enrolled in credit courses. It is an enrollment or registration fee and is calculated based on the number of student credit hours for which the student enrolls. Alternatively, at ~~technology centers~~ colleges of applied technology this term refers to program fees. Tuition does not include application for admission fees, student activity fees, debt service fees, lab fees, applied music fees, the cost of books or other course materials, dormitory charges, or meal plans.

(8) Retired state employee: Employee of the State of Tennessee who retires after a minimum of twenty-five (25) years of full-time creditable service, although he or she may be deceased at the time the children seeks the benefit provided by this chapter.

(9) Retired teacher: A certified teacher as defined in this chapter who retires after a minimum of thirty (30) years of full-time creditable service in Tennessee public schools or who receives disability retirement after a minimum of twenty-five (25) years of full-time creditable service in Tennessee public schools.

(~~9~~10) State operated institution of higher learning or Institution: Any institution operated by the University of Tennessee or the Tennessee Board of Regents which offers courses of instruction beyond the high school level.

Authority: *T.C.A. §§ 8-50-115, ~~and~~ 49-7-119, 2013 Public Acts, Chapter 345, 2005 Public Acts, Chapter 447, and 2003 Public Acts, Chapter 136~~; and Public Chapter 447 of the Acts of 2005~~.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Amendment filed October 27, 1992; effective January 28, 1993. Amendment filed October 20, 1993; effective March 1, 1994. Amendment filed February 3, 2000; effective June 28, 2000. Repeal and new rule filed August 31, 2004; effective December 29, 2004. Public necessity rule filed June 3, 2005; effective through November 15, 2005. Amendment filed June 3, 2005; effective October 28, 2005. Public necessity rule filed September 1, 2005; effective through February 13, 2006. Amendment filed September 1, 2005; effective January 27, 2006.*

1540-01-05-.02 ELIGIBILITY.

(1) The successful applicant for a student fee discount must meet all of the following:

(a) Be twenty-three (23) years of age or under;

(b) Be a child of a teacher or state employee or deceased state employee in Tennessee as defined in this chapter;

(c) Be eligible according to the regulations in this chapter; and

(d) Be eligible for enrollment at the institution for which a student fee discount is sought according to the academic rules and regulations of the institution.

(2) Eligible children may enroll in any number of courses up to and including full-time study.

(Rule 1540-01-05-.02, continued)

(3) Fee discounts are only available for courses classified as undergraduate as defined by the institutions.

(4) Eligibility for the discount will be based on the employment status of the teacher or state employee and the age of the child on the first day of classes for the term as determined by the institution. A change in employment status or the child's age after the first day of classes will affect eligibility for the discount only for subsequent terms.

(5) At the time of enrollment, the student must present a completed form for children of teachers or state employees certifying eligibility to receive a tuition discount. This form must be signed by the teacher or state employee, his or her employer, and the student. Forms are available at the public higher education institutions or at the Commission's website <www.state.tn.us/thec>. Children of retired state employees and retired teachers must have this form signed by a designated official of the State Treasury Department, Division of Retirement to verify that the identified state employee or teacher has retired ~~with a minimum of twenty-five (25) years~~ with the required number of years of creditable service. For children of state employees killed on the job or in the line of duty, the form must be signed by a designated official of the state agency at which the employee was last employed.

Authority: *T.C.A. §§ 8-50-115, ~~and~~ 49-7-119, and 2013 Public Acts, Chapter 345.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Amendment filed October 27, 1992; effective January 28, 1993. Amendment filed October 20, 1993; effective March 1, 1994. Amendment filed April 4, 1994; effective August 28, 1994. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-05-.03 LIMITATIONS.

(1) Fee discounts will not be retroactive for prior terms. Fee discounts are available only by application and should be approved prior to the beginning of the term for which a discount is being sought.

(2) The fee discount described by this chapter may not be used in conjunction with any other fee waiver or discount program. No eligible child shall receive a discount greater than twenty-five percent (25%) for any one term under the provisions of the programs described by this chapter.

(3) The Higher Education Commission shall develop a methodology for allocating appropriations to reimburse institutions for actual fee discounts provided pursuant to this program.

Authority: T.C.A. §§ 8-50-115 and 49-7-119. ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Amendment filed October 27, 1992; effective January 28, 1993. Amendment filed April 4, 1994; effective August 28, 1994. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-05-.04 APPEAL PROCEDURES.

Appeals regarding the determination of eligibility of the applicant will be available in a manner consistent with institutional procedures now in place for admissions decisions.

Authority: *T.C.A. §§ 8-50-115 and 49-7-119.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

1540-01-05-.05 REPEALED.

Authority: *T.C.A. §§ 8-50-115 and 49-7-119.* ***Administrative History:*** *Original rule filed September 6, 1990; effective December 29, 1990. Repeal and new rule filed August 31, 2004; effective December 29, 2004.*

The vote by the Commission on these rules was as follows:

Commission Member	Aye	No	Abstain	Absent	Signature (if required)
Cato Johnson, Chair, Bartlett - 7th Congressional District	X				
Jon Kinsey, Vice-Chair, Chattanooga - 3rd Congressional District	X				
Evan Cope, Vice-Chair, Murfreesboro - 4th Congressional District	X				
A C Wharton, Jr., Secretary, Memphis - 9th Congressional District				X	
Tre Hargett, Secretary of State				X	
Justin P. Wilson, State Comptroller				X	
David H. Lillard, Jr., State Treasurer	X				
Greg Isaacs Knoxville - 2nd Congressional District				X	
Pam Koban, Nashville 5th Congressional District	X				
Charles W. Bone, Hendersonville 6th Congressional District	X				
Sharon L. Hayes, Brownsville - 8th Congressional District	X				
Adam Jarvis, voting ex-officio, East Tennessee State University	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Higher Education Commission on 07/25/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 8-9-13

Signature: [signature]

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director

CORSINA DICKSON-WILEY STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.
My Commission Expires AUG. 23, 2016

Subscribed and sworn to before me on: 08-09-13

Notary Public Signature: [signature]

My commission expires on: 08-23-2016

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

[signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

10-14-13
Date

Department of State Use Only

Filed with the Department of State on: 10/17/13

RECEIVED 2013 OCT 17 PM 3:58

Effective on: 3/31/14

[signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Natural Areas
SUBJECT:	Rare Plant Protection
STATUTORY AUTHORITY:	Tennessee Code Annotated Section 70-8-301 et seq.
EFFECTIVE DATES:	January 15, 2014 through June 30, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule modifies the rare plant and conservation regulations by removing some plants on the endangered plant list that are no longer as rare as formerly believed, by adding plants to the list, and by correcting the scientific names for some plants on the list.

Public Hearing Comments

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

Comment: At the December 2, 2009 meeting of the Tennessee Rare Plant Scientific Advisory committee a decision was made to remove *Prenanthes crepidinea* Michx. from the list of endangered plants. A number of new populations had been discovered in recent years and the committee determined that this species was not as rare as formerly believed. In addition, at the December 12, 2012 meeting of the committee a decision was made to remove *Prenanthes crepidinea* Michx.from the rare plant list entirely. In the intervening years since the 2009 meeting, additional populations were discovered in several areas of the state and the committee decided that this species did not deserve even the lowest status of special concern.

Although this species was not proposed to be deleted change from processes subsequent to the 2009 meeting it is clear that the scientific community is in agreement that *Prenanthes crepidinea* Michx. should not be on the list of endangered plants for Tennessee, and, therefore, it should be deleted from the list.

Response: The Department agrees and has deleted *Prenanthes crepidinea* Michx. from the list of endangered plants.

Comment: A commenter believes that *Prenanthes aspera* Michx. was deleted in error during the rule change subsequent to the 2009 meeting and should be restored to the list as endangered. The committee has not propose any change to the status of *Prenanthes aspera* Michx. in ether the 2009 or 2012 meeting.

Response: The Department agrees and has restored *Prenanthes aspera* Michx. to the list of endangered plants.

Regulatory Flexibility Addendum

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

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

There are no changes to the costs or benefits to small businesses in the proposed rule changes.

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are no changes to reporting or recordkeeping in the proposed rule changes.

(3) A statement of the probable effect on impacted small businesses and consumers.

No effect on businesses or consumers is expected.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Any measures less burdensome would not achieve the purpose of the rule.

(5) A comparison of the proposed rule with any federal or state counterparts.

The Endangered Species Act of 1973 (16 U.S.C. 1531-1544) covers fewer plant species in Tennessee but the regulations are more restrictive.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

There are no additional requirements in the rule changes.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The Department does not anticipate that these amended rules will have a financial impact on local governments.

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Sequence Number: 10-17-13
Rule ID(s): 5592
File Date: 10/17/13
Effective Date: 1/15/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Natural Areas
Contact Person:	Todd Crabtree
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-1378
Email:	Todd.Crabtree@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0400-06-02	Rare Plant Protection and Conservation Regulations
Rule Number	**Rule Title**
0400-06-02-.04	List of Endangered Species

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Chapter 0400-06-02
Rare Plant Protection and Conservation Regulations

Amendment

Rule 0400-06-02-.04 List of Endangered Species is amended by deleting it in its entirety and replacing it with the following new Rule 0400-06-02-.04 List of Endangered Species to read as follows:

0400-06-02-.04 List of Endangered Species.

The endangered plant list of Tennessee includes the following:

Latin Name	Common Name
Aconitum reclinatum A. Gray	~~Gray~~ trailing white monkshood
Agalinis auriculata (Michx.) Blake	~~Blake~~ ear-leaved false-foxglove
Agalinis heterophylla (Nutt.) Small ex Britton	prairie false foxglove
Agalinis oligophylla Pennell	ridge-stem false foxglove
Agalinis plukenetii (Ell.) Raf	purple gerardia
Allium stellatum Fraser	glade onion
~~Anemone canadensis L.~~	~~Canada anemone~~
Anemone caroliniana Walt.	Carolina anemone
Apios priceana Robbins	Price's potato-bean
Arenaria lanuginosa (Michx.) Rohrback	wooly sandwort
Aristida ramosissima Engelm. ex Gray	branched three-awn grass
Asplenium scolopendrium L. var. *americanum* (Fern.) Kartesz & Gandhi	Hart's-tongue fern
~~Astilbe crenatiloba (Britt.) Small~~	~~Crenate-lobed false goat's-beard~~
Astragalus bibullatus Barneby and Bridges	Pyne's ground-plum
Betula papyrifera Marsh var. *cordifolia* (Regel) Fern.	heart-leaved paper birch
Boechera patens (Sull.) Al-Shehbaz	spreading rockcress
Boechera perstellata (E. L. Braun) Al-Shehbaz	Braun's rockcress
Brachydontium trichodes (Web.) Milde	peak moss
Botrychium simplex E. Hitchc.	least moonwort
Bulbostylis ciliatifolia (Ell.) Fern. var. *coarctata* (Ell.) Kral	capillary hairsedge
Calamagrostis cainii Hitchcock	Cain's reedgrass
Calamagrostis porteri A. Gray	Porter's reedgrass
~~Calopogon oklahomensis D.H. Goldman~~	~~Oklahoma grass-pink~~
Caltha palustris L.	marsh marigold
~~Carex alopecoidea Tuckerm.~~	~~Foxtail sedge~~
Carex barrattii Schweinitz and Torr.	Barratt's sedge
Carex buxbaumii Wahlenb.	Buxbaum's ~~S~~sedge
Carex canescens L. ssp. *disjuncta* Fern.	hoary ~~S~~sedge
Carex fumosimontana Estes	Smoky Mountain sedge
Carex lonchocarpa Willd. ex Spreng.	southern ~~Long Sedge~~ long sedge
Carex manhartii Bryson	Manhart's sedge
Carex muskingumensis Schweinitz	Muskingum sedge
Carex pellita Willd.	woolly sedge
~~Carex roanensis Hermann~~	~~Roan mountain sedge~~
~~Carex sterilis Willd.~~	~~Sterile sedge~~
~~Carex utriculata Boott.~~	~~Northwest Territory sedge~~
~~Carex vestita Willd.~~	~~Velvety sedge~~
Carex tetanica Schkuhr	rigid sedge
Cephaloziella messalongi (Spruce) K. Muell.	a liverwort
Cerastium velutinum Raf.	velvety cerastium
Clematis fremontii S. Wats.	Fremont's Leather Flower
Clematis glaucophylla Small	white-leaved leatherflower

Clematis morefieldii Kral	Huntsville vasevine
Clethra alnifolia L.	coastal pepperbush
Coeloglossum viride (L.) Hartman var. *virescens* (Muhl. ex Willd.) Luer	long-bracted green orchis
Collinsia verna Nutt.	~~Spring~~ blue-eyed Mary
Comptonia peregrina (L.) Coulter	sweet-fern
Coreopsis latifolia Michx.	broad-leaved tickseed
Coreopsis delphiniifolia Lam.	larkspur-leaved coreopsis
Corydalis sempervirens (L.) Pers.	pale corydalis
Crataegus harbisonii Beadle	Harbison's hawthorn
~~Crotalaria purshii DC.~~	~~Pursh's rattlebox~~
Cypripedium kentuckiense Reed	southern lady's-slipper
Cypripedium reginae Walt.	showy lady's-slipper
Dalea foliosa (A. Gray) Barneby	leafy prairie-clover
Dalea purpurea Vent.	purple prairie-clover
Delphinium exaltatum Ait.	tall larkspur
Desmodium ochroleucum M.A. Curtis ex Canby	creamflower tick-trefoil
Diamorpha smallii Britt.	Small's stonecrop
Dichanthelium acuminatum ssp. *spretum* (Schult.) Freckmann & Lelong	Eaton's witchgrass
Dichanthelium ensifolium ssp. *curtifolium* (Nash) Freckmann & Lelong	short-leaved panic grass
Echinacea pallida (Nutt.) Nutt.	pale purple coneflower
~~Echinacea tennesseensis (Beadle) Small~~	~~Tennessee coneflower~~
Eleocharis elliptica Kunth	elliptic spike rush
Eleocharis equisetoides (Ell.) Torr.	horse-tail spike-rush
Eleocharis intermedia J.A. Schultes	matted spike rush
Eleocharis wolfii A. Gray	Wolf's spike rush
~~Elymus svensonii Church~~	~~Svenson's wild-rye~~
Eriocaulon decangulare L.	ten-angle pipewort
Eriogonum longifolium Nutt. var. *harperi* (Goodm.) Reveal	Harper's umbrella-plant
Eriophorum virginicum L.	tawny cotton grass
Erysimum capitatum (Dougl.) Greene	western wallflower
Eupatorium leucolepis (DC.) Torr. and A. Gray	white-bracted thoroughwort
Eurybia saxicastelli (J. J. N. Campbell & Medley) G. L. Nesom	Rockcastle aster
Euthamia ~~gymnospermioides~~ *gymnospermoides* Green	Great Plains goldentop
Fimbristylis perpusilla Harper	Harper's fimbristylis
Frullania appalachiana R. M. Schust.	a liverwort
Gentiana puberulenta J.S. Pringle	prairie gentian
Geum aleppicum Jacq.	yellow avens
Geum geniculatum Michx.	bent avens
Geum radiatum Michx.	spreading avens
Glyceria laxa (Scribn.) Scribn.	limp manna grass
Gratiola floridana Nutt.	Florida hedge-hyssop
Hedyotis purpurea (L.) Torr. & A.Gray var. *montana* (Small) Fosberg	Roan Mountain bluet
Helenium brevifolium (Nutt.) Wood	shortleaf sneezeweed
~~Helianthemum bicknellii Fern.~~	~~Plains frostweed~~
~~Helianthemum canadense (L.) Michx.~~	~~Canada frostweed~~
Helianthemum propinquum E.P. Bicknell	low frostweed
Helianthus verticillatus Small	whorled sunflower
Homaliadelphus sharpii (Williams) Sharp	Sharp's homaliadelphus moss
Hydrocotyle americana L.	American water-pennywort
Hypericum adpressum Barton	creeping St. John's-wort
Hypericum ellipticum Hook.	pale St. John's-wort
Hypericum graveolens Bickl.	mountain St. John's-wort
Iris brevicaulis Raf.	Lamance iris
Isoetes appalachiana D.F.Brunton & D.M.Britton	Appalachian quillwort

Isoetes melanopoda Gay and Durieu	blackfoot quillwort
Isoetes tennesseensis N.T. Luebke & J.M. Budke	Hiwassee quillwort
Isotria medeoloides (Pursh) Raf.	small whorled pogonia
~~Juncus trifidus L. var. carolinianus Hamet-Ahti~~	~~Highland rush~~
~~Kalmia angustifolia L. var. carolina (Small) Fern.~~	~~Sheep-laurel~~
Lachnanthes caroliana (Lam.)	Carolina redroot
~~Lachnocaulon anceps (Walt.) Morong~~	~~Bog-buttons~~
~~Leavenworthia exigua Rollins var. lutea Rollins~~	~~Pasture glade-cress~~
Lechea pulchella Raf.	Leggett's pinweed
Lejeunea sharpii (Schust.) Schust.	Sharp's lejeunia
Leptodontium viticulosoides var. *sulphureum* (Müller Hal.) R. H. Zander	Grandfather Mountain leptodontium
Leptohymenium sharpii (Crum & Anders.) Buck & Crum	Mount ~~Leconte~~ Le Conte moss
Leptoscyphus cuneifolius (Hook.) Mitt.	a liverwort
Lilium grayi S. Wats.	Gray's lily
Lilium philadelphicum L.	wood lily
~~Linnaea borealis L.~~	~~Twinflower~~
Listera australis Lindl.	southern twayblade
Lonicera prolifera (Kirchner) Rehder	grape honeysuckle
~~Lycopodium annotinum L.~~	~~Stiff clubmoss~~
Lysimachia fraseri Duby	Fraser's loosestrife
Lysimachia quadriflora Sims	fourflower ~~Yellow Loosestrife~~ yellow loosestrife
Lysimachia terrestris (L.) BSP.	swamp loosestrife
Maianthemum stellatum (L.) Link	starflower false ~~Solomon~~ solomom's-seal
Marshallia grandiflora Beadle and Boynton	large-flowered Barbara's-buttons
Marshallia obovata (Walt.) Beadle & F.E. Boynton	spoonshape Barbara's buttons
Marsupella funckii (Web. & Mohr) Dumort.	a liverwort
Melanthium latifolium Desr.	broadleaf bunchflower
Melanthium virginicum L.	Virginia bunchflower
Melanthium woodii (J.W. Robbins ex Wood) Bodkin	Ozark bunchflower
Minuartia cumberlandensis (Wofford & Kral) McNeill	Cumberland sandwort
Minuartia godfreyi (Shinners) McNeill	Godfrey's stitchwort
Minuartia groenlandica (Retzius) Ostenfeld	mountain sandwort
Muhlenbergia cuspidata (Torr.) Rydb.	plains muhly
Muhlenbergia torreyana (Shult.) Hitchcock	Torrey's dropseed
Myriophyllum pinnatum (Walt.) B.S.P.	cutleaf Watermilfoil
Nestronia umbellula Raf.	conjurer's nut
Onosmodium hispidissimum Mack.	shaggy false gromwell
Onosmodium molle Michx. ssp. *subsetosum* (Mack & Bush) Cochrane	smooth false gromwell
Patis racemoss (Sm.) Romasch., P.M. Peterson & R. J. Soreng	mountain ricegrass
Paxistima canbyi A. Gray	Canby's mountain-lover
Paysonia perforata (Rollins) O'Kane & Al-Shehbaz	Spring Creek ~~Bladderpod~~ bladderpod
Paysonia stonensis (Rollins) O'Kane & Al-Shehbaz	Stones River ~~Bladderpod~~ bladderpod
Perideridia americana (Nutt. ex DC.) Reichenb.	thicket parsley
Phegopteris connectilis (Michx.) Watt	long beech fern
Physaria globosa (Desv.) O'Kane	globe ~~Bladderpod~~ bladderpod
Pityopsis ruthii (Small) Small	Ruth's golden-aster
Plantago cordata Lam.	heart-leaved plantain
Platanthera grandiflora (Bigelow) Lindl.	large purple fringed orchid
Platanthera integra (Nutt.) A. Gray ex Beck	yellow fringeless orchid
Platanthera integrilabia (Correll) Luer	white fringeless orchid
Platanthera nivea (Nutt.) Luer	snowy orchid
Poa palustris L.	~~owl~~ owl bluegrass
Pogonia ophioglossoides (L.)Ker-Gawl.	rose pogonia
Polygala nana (Michx.) DC.	dwarf milkwort
Polygala nuttallii Torr. and A. Gray	Nuttall's milkwort
Polygonella americana (Fisch. and Mey)	small ~~Southern~~ southern jointweed
Ponthieva racemosa (Walt.) Mohr	shadow-witch

Porella ~~sp. nov. (sp. 1)~~ *gracillima*	hot porella
Prenanthes aspera Michx.	rough rattlesnake-root
Prunus pumila L.	sand cherry
Pycnanthemum beadlei (Small) Fern.	Beadle's mountain mint
~~*Prenanthes crepidinea* Michx.~~	~~nodding rattlesnake-root~~
Pycnanthemum verticillatum (Michx.) Pers.	whorled mountain-mint
Pyrola americana Sweet	American wintergreen
Ranunculus aquatilis var. *diffusus* Withering	eastern white water crowfoot
Rhamnus alnifolia L'Hér.	alderleaf buckthorn
~~Rhynchosia latifolia Nutt.~~	~~Prairie rhynchosia~~
~~Rhynchospora alba (L.) Vahl~~	~~White beakrush~~
Rhynchospora capillacea Torr.	horned ~~beakrush~~ beak-rush
Rhynchospora debilis Gale	savannah ~~Beak-Rush~~ beak-rush
~~Rhynchospora latifolia (Baldw.) Thomas~~	~~Giant white-top sedge~~
Rhynchospora rariflora (Michx.) Ell.	few-flowered beak-rush
~~Rhynchospora wrightiana Boeckler~~	~~Wright's beak-rush~~
~~Ribes americanum P.Mill.~~	~~Wild Black Currant~~
Rudbeckia triloba L. var. *pinnatiloba* Torrey & A. Gray	browneyed ~~Susan~~ susan
Rugelia nudicaulis Shuttlw. ex Chapman	Rugel's ragwort
Sabatia capitata (Raf.) Blake	rose gentian
Sagittaria rigida Pursh	~~Sessile-Fruited Arrowhead~~ sessile-fruited arrowhead
Sanguisorba canadensis L.	canada burnet
Saxifraga caroliniana A. Gray	Carolina saxifrage
Saxifraga pensylvanica L.	swamp saxifrage
~~Schwalbea americana L.~~	~~Chaffseed~~
Scutellaria arguta Buckl.	hairy scullcap
Sedum nevii A. Gray	Nevius' stonecrop
~~Seymeria cassioides (J.F. Gmelin) Blake~~	~~Seymeria~~
~~Sida hermaphrodita (L.) Rusby~~	~~Virginia mallow~~
Silene ovata Pursh	ovate catchfly
~~Silene regia Sims~~	~~Royal catchfly~~
Silphium brachiatum Gattinger	Cumberland rosinweed
~~Silphium wasiotense Medley~~	~~Kentucky rosinweed~~
Solidago gattingeri Chapm.	Gattinger's goldenrod
Solidago lancifolia Torr. and A. Gray	broadleaf goldenrod
Solidago porteri Small	Porter's goldenrod
Solidago ptarmicoides (Nees) Bovin	prairie goldenrod
Solidago rupestris Raf.	rock goldenrod
Solidago spithamaea M.A. Curtis	Blue Ridge goldenrod
Sparganium androcladum (Engelm.) Morong	branching bur-reed
Sphenolobopsis pearsoni (Spruce) Shust. & Kitag.	~~Sphenolobopsis~~ a liverwort
Spiraea alba DuRoi	narrow-leaved meadow-sweet
Spiraea virginiana Britt.	Virginia spiraea
Spiranthes magnicamporum Sheviak	Great ~~Plains Ladies'-Tresses~~ Plains ladies'-tresses
Spiranthes ochroleuca (Rydb.) Rydb.	yellow nodding ladies'-tresses
Spiranthes odorata (Nutt.) Lindl.	sweetscent ladies'-tresses
Sporobolus junceus (P.Beauv.) Kunth	~~Piney-Woods Dropseed~~ Piney-woods dropseed
Stellaria alsine Grimm	trailing stitchwort
Stellaria longifolia Muhl.	longleaf stitchwort
Stenanthium diffusum Wofford	Cumberland featherbells
Sullivantia sullivantii (Torr. & Gray) Britt.	Sullivan's coolwort
Symphyotrichum ericoides (L.) G.L. Nesom var. *ericoides*	bushy aster
Symphyotrichum praealtum (Poiret) G. L. Nesom	willow aster
Symphyotrichum pratense (Rafinesque) Nesom	barrens silky aster
Symplocarpus foetidus (L.) Nutt.	skunk-cabbage
Taxus canadensis Marsh.	American yew
~~Tetragonotheca helianthoides L.~~	~~Pineland squarehead~~
Thaspium pinnatifidum (Buckley) A. Gray	cutleaf meadow parsnip
~~Thelypteris simulata (Davenport) Nieuwl.~~	~~Bog fern~~

Tortula ammonsiana Crum & Anders.	Ammon's tortula
Tortula fragilis Tayl.	fragile tortula
Triantha glutinosa (Walter) Small	sticky false asphodel
Triantha racemosa (Walter) Small	coastal false-asphodel
Tridens flavus (L.) Hitchc. var. *chapmanii* (Small) Shinners	purpletop tridens
Trichophorum cespitosum (L.) Hartman	tufted club-rush
Trifolium calcaricum J.L. Collins & Wieboldt	running glade clover
Trifolium reflexum L.	buffalo clover
Trillium decumbens Harbison	trailing trillium
Trillium lancifolium Raf.	narrow-leaved trillium
Trillium pusillum Michx.	least trillium
Trillium rugelii Rendle	southern nodding trillium
Utricularia cornuta Michx.	horned bladderwort
Vaccinium elliottii Chapm.	mayberry
Veronica catenata Pennell	sessile water-speedwell
Veronica scutellata L.	marsh-speedwell
Viburnum bracteatum Rehd.	limerock ~~arrowwood~~ arrow-wood
Viburnum molle Michx.	softleaf arrow-wood
Vitis rupestris Scheele	rock grape
Xyris ambigua Beyr. ex. Kunth.	coastal-plain yellow-eyed-grass
Xyris fimbriata Ell.	fringed yellow-eyed-grass
Xyris tennesseensis R. Kral	Tennessee yellow-eyed-grass
Zigadenus glaucus Nutt.	white camas

Authority: T.C.A. §§ 70-8-301 et seq., and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 6-27-2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/01/13

Rulemaking Hearing(s) Conducted on: (add more dates). 04/12/13

Date: 6-27-13

Signature: Robert Martineau

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

BETH B. SMITH STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

My Commission Expires JULY 6, 2015

Subscribed and sworn to before me on: 6-27-13

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

Pursuant to T.C.A. §§ 70-8-305 and 70-8-313, I have reviewed and concur with the additions and deletions to the list of endangered species.

Julius T. Johnson

Julius T. Johnson, Commissioner
Department of Agriculture

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

R E Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

10-10-13
Date

Department of State Use Only

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Filed with the Department of State on: 10/17/13

Effective on: 1/15/14

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Department of General Services
DIVISION:	Central Procurement Office
SUBJECT:	Procurement
STATUTORY AUTHORITY:	Tenn. Code Ann. Section 4-5-105 and Title 12, Chapter 3.
EFFECTIVE DATES:	January 20, 2014 through June 30, 2014
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	This rulemaking hearing rule amends terminology to conform to the new statutory scheme for procurement; adds information regarding contract negotiations and competitive negotiations; clarifies the contract approval processes as such processes relate to the chief procurement officer, the comptroller, and fiscal review committee; and adds a section on mandatory, permissive, and prohibited contract language.

Public Hearing Comments

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

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

This proposed rule will not affect small businesses.

Impact on Local Governments

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

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

This proposed rule will not impact local governments.

Department of State
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Fax: 615-741-5133
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For Department of State Use Only

Sequence Number: 10-22-13
Rule ID(s): 5594-5599
File Date: 10/22/13
Effective Date: 1/20/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Department of General Services
Division:	Central Procurement Office
Contact Person:	Paul Krivacka
Address:	312 Rosa L. Parks Ave., 3rd Floor, Nashville, TN
Zip:	37243
Phone:	615-741-6916
Email:	paul.krivacka@tn.gov

Revision Type (check all that apply):

___ Amendment
x New
x Repeal

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

Chapter Number	**Chapter Title**
0620-03-03	Personal, Professional, and Consulting Service Contracts
Rule Number	**Rule Title**
0620-03-03-.01	Applicability
0620-03-03-.02	Office of Contracts Review
0620-03-03-.03	Procurement Methods
0620-03-03-.04	Protest Procedures
0620-03-03-.05	Contract Form
0620-03-03-.06	Contract Approval
0620-03-03-.07	General Requirements
0620-03-03-.08	Special Cases
0620-03-03-.09	Delegated Authority
0620-03-03-.10	Contract Management
0620-03-03-.11	Contract Termination
0620-03-03-.12	Exceptions To Rules
0620-03-03-.13	Appendix I of Rule 0620-03-03-.04
Chapter Number	**Chapter Title**
0620-03-07	Limitations of Liability in State Services
Rule Number	**Rule Title**
0620-03-07-.01	Policy Statement and Scope of Rules
0620-03-07-.02	Approval For Limitation of Liability
Chapter Number	**Chapter Title**
0620-03-08	Contract Management and Subrecipient Monitoring
Rule Number	**Rule Title**
0620-03-08-.01	Scope
0620-03-08-.02	Applicability
0620-03-08-.03	Contract Management and Subrecipient Monitoring-Distinguished

0620-03-08-.04	Contract Management
0620-03-08-.05	Subrecipient Monitoring
0620-03-08-.06	Exceptions to Rules
Chapter Number	**Chapter Title**
0620-03-09	Appeals Process for Persons Barred from State Contracting for Use of Illegal Immigrants
Rule Number	**Rule Title**
0620-03-09-.01	Purpose and Scope
0620-03-09-.02	Notice
0620-03-09-.03	Review Procedure
0620-03-09-.04	Appointment of Designee
Chapter Number	**Chapter Title**
0690-03-01	Purchase of Materials, Supplies, Equipment and Services
Rule Number	**Rule Title**
0690-03-01-.01	Authority and Scope
0690-03-01-.02	Definitions
0690-03-01-.03	Methods of Purchasing
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0690-03-01-.05	Competitive Negotiation
0690-03-01-.06	Preparation of Invitations to Bid, Specifications, Requisitions and Reports
0690-03-01-.07	Bids and Purchasing Records
0690-03-01-.08	Award
0690-03-01-.09	Bonds
0690-03-01-.10	Authorization for Shipment, Delivery, Receipt, Inspection and Storage
0690-03-01-.11	Purchases from Small Businesses
0690-03-01-.12	Resolution of Protests by the Commissioner
0690-03-01-.13	Amending or Repealing Rules and Regulations
Chapter Number	**Chapter Title**
0690-03-02	Purchase of Materials, Supplies, Equipment and Services Limitations of Liability
Rule Number	**Rule Title**
0690-03-02-.01	Policy Statement and Scope of Rules
0690-03-02-.02	Approval for Limitation of Liability

New Rules

Chapter Number	**Chapter Title**
0690-03-01	Comprehensive Rules and Regulations of the Central Procurement Office
Rule Number	**Rule Title**
0690-03-01-.01	Applicability
0690-03-01-.02	Definitions
0690-03-01-.03	Central Procurement Office
0690-03-01-.04	Authority Delegated to State Agencies
0690-03-01-.05	Procurement Methods
0690-03-01-.06	Procurement Process-Elements of Solicitation Document and Process Prior to Award
0690-03-01-.07	Procurement Process-Proposal and Performance Bonds
0690-03-01-.08	Procurement Process-Communication and Negotiation
0690-03-01-.09	Procurement Process-Determining Non-Responsiveness
0690-03-01-.10	Procurement Process-Amendment or Withdrawal of Responses
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0690-03-01-.23	General Requirements of Payments
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0690-03-01-.26	Exceptions to Rules
0690-03-01-.27	Agency Term Contract Management and Subrecipient Monitoring
0690-03-01-.28	Contract with Current or Former State Employee

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

~~CHAPTER 0620-3-3~~
~~PERSONAL, PROFESSIONAL~~
~~AND CONSULTING SERVICE CONTRACTS~~

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~~0620-3-3-.01 APPLICABILITY.~~ (1) These ~~rules~~Rules shall apply to all procurements and resulting contracts for ~~personal services, professional services and consultant~~commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the ~~state~~State of Tennessee (referenced herein as "agency"), with the following exceptions:

(~~1~~a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of ~~Tennessee Code Annotated,~~T.C.A. §§ 54-5-~~113,~~101. et~~.~~ seq. ~~shall be exempt from these rules.~~

~~(2) Contracts for services which, by their nature, have sufficiently uniform and impersonal criteria so that the Department of General Services may properly let the contract by bid based upon conformance with required specifications and lowest overall price, may be procured through the Department of General Services, Purchasing Division.~~(b) The University of Tennessee and the Tennessee Board of Regents college and university systems.

~~Examples of such services include but are not limited to: pest control, moving and hauling, refuse collection, charter service (e.g., vehicle, plane), slaughtering services and meat processing, answering services, printing services, ambulance service, bulldozer service, maintenance (e.g., elevator, machinery, building, grounds, plumbing, electrical), window washing, laundry, and film processing.~~

~~(3) The Commissioner of Finance and Administration may waive any part of these rules that may detrimentally impact federal funding.~~

~~(4) Any part of these rules which may conflict with applicable law shall be null and void.~~

~~(5) The University of Tennessee and the Tennessee Board of Regents college and university systems shall have the option of:~~

~~(a) following these rules, the policy and procedures specified herein; or~~

~~(b) developing their own service contracting procedures, provided that such are in compliance with the policy expressed in these rules.~~

~~(6) In lieu of approvals required in accordance with Rule 0620-3-3-.06(3), the head of a procuring agency may approve the procurement methodology and associated procurement documents should the total cost of services fall below $500.00 (or another amount up to $15,000.00 which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury).~~

~~(a) Service procurements under this threshold shall be made in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines but shall require no approval beyond that of the procuring agency head; provided that:~~

~~1. such procurements are still subject to applicable provisions of these rules;~~

~~2. such procurements do not require expenditures from more than one fiscal year;~~

~~3. such procurements do not involve the purchase of financial management, auditing, accounting, management services of all types, management studies, planning services, public relations, evaluations, systems designs, data processing, engineering, or architectural services;~~

~~4. procurement requirements shall not be artificially divided so as to constitute a purchase subject to this rule, 0620-3-3-.01(6); and~~

~~5. annual needs for the subject service could not otherwise be more advantageously met with a fee for service contract.~~

~~(b) Notwithstanding the foregoing, all procurement documents under this rule, 0620-3-3-.01(6), shall be submitted to the Department of Finance and Administration Office of Contracts Review for data collection and funding certification.~~

(c) ~~Rule 0620-3-3-.01(6) shall not be construed to apply to an Endowment Grant, a Delegated Grant Authority, a Delegated Loan Authority, a Delegated Purchase Authority, a no cost contract, or a revenue contract as defined by Rule 0620-3-3-.08 and .09 and shall not be construed to apply to Department of Transportation construction and engineering procurements made in accordance with the provisions of Tennessee Code Annotated, §§ 54-5-113, et. seq.(7)~~ Contracts to employ additional legal counsel for the ~~state~~State of Tennessee that are subject to the provisions of ~~Tennessee Code Annotated,~~T.C.A. § 8-6-~~106. Said contracts~~106 shall not be subject to these ~~rules.~~ Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the ~~state~~State of Tennessee and not directly provided to the ~~state~~State of Tennessee shall be made in accordance with these ~~rules~~Rules.

~~(8)~~ d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.

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

~~(9)~~ ~~Gifts~~f) Contracts conveying gifts to the ~~state do~~State are not ~~require a contract~~ subject to these ~~rules~~Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient ~~state agency~~State Agency regarding the gift.

~~(a) For purposes of this rule, a gift to the state shall be defined as a voluntary transfer of service to the state made gratuitously and without consideration. Essential requisites of a gift are:~~g) These Rules shall not apply to contracts requiring State Building Commission approval.

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

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

(j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring

to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

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

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

0690-03-01-.02 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) "Contract" means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

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

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

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

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

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

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

(w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a

State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

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

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

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

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

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

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

1. ~~capacity~~ Capacity of the donor ~~of~~to make the gift;

2. ~~intention~~ Intention of the donor to make ~~a~~the gift;

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

4. ~~acceptance~~ Acceptance of the gift by the ~~state~~State.

~~(b)~~ Nothing in this ~~rule~~Rule shall be construed to mean that the ~~state~~State must accept any gift.

~~(10) These rules shall not apply to utilities.~~dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.

(ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not

include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(11) These rules shall not apply to contracts required to be approved by the State Building Commission.~~
Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, 12-4-110, and Chapter 601 of the Public Acts of 1976.~~
~~Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~
0690-03-01-.03 Central Procurement Office.

~~0620-3-3-.02 OFFICE OF CONTRACTS REVIEW. There shall be created within the Department of Finance and Administration an Office of Contracts Review, which~~
(1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority~~, subject to the approval of the Commissioner of Finance and Administration,~~ regarding all matters subject to these ~~rules~~Rules.

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

~~(1) execute the rules of this chapter;~~a) Implementing these Rules;

~~(2) act on behalf of the Commissioner of Finance and Administration in making~~b) Providing necessary guidance, determinations and interpretations as required by these ~~rules~~Rules or applicable law;

~~(3) provide~~c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

(d) Providing procedural direction governing ~~personal, professional, or consultant service~~ procurements and contracts for goods and services in accordance with these ~~rules~~Rules or applicable law;

~~(4) provide~~e) Providing guidelines for drafting ~~service~~ procurement and contract documents in accordance with these ~~rules~~Rules or applicable law;

~~(5) provide~~f) Providing technical assistance to ~~state agencies~~State Agencies regarding ~~service~~ procurements and writing contracts governed by these ~~rules~~Rules or applicable law;

~~(6) provide coordination services for the~~g) Providing review and approval of ~~service~~procurements and contracts in accordance with these ~~rules~~Rules or applicable law;

~~(7) administer a system~~h) Administering a procedure as defined in Central Procurement Office Policy for registering ~~service~~ providers who may contract with the ~~state~~ State pursuant to these ~~rules; and,~~Rules or applicable law;

(i) Resolving protests of Aggrieved Respondents;

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

~~(8) provide analysis and support to the Commissioner of Finance and Administration regarding state procurement processes~~k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: ~~§§4-5-202, 4-325, Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

~~0620-3-3-.03 PROCUREMENT METHODS.~~
0690-03-01-.04 Authority Delegated to State Agencies.

(1) ~~A procurement method is the process by which the state selects one or more contractors with which to contract for a given service.~~ A

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

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

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

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

3. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

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

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

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

~~(a) Personal, professional, and consultant services shall be procured by a method that is determined in the state's discretion to be efficient and reasonable. Except as otherwise provided in these rules, contracts representing the procurement of services shall be made on a competitive basis.~~

0690-03-01-.05 Procurement Methods.

~~(b) To be competitive, a procurement method must include a consideration and comparison of potential contractors, based upon both cost and quality (i.e., service provider qualifications, experience, and technical approach). The terms "proposal," "bid," "quote," and "offer" shall all~~1) Procurement Methods-Generally

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

~~denote that which a service provider provides for competitive consideration and comparison under any competitive procurement methodology~~

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

~~(c) Accordingly, the Request for Proposal process, Competitive Negotiation, or an Alternative Competitive Procurement Method may be used as prescribed by these rules. Notwithstanding the foregoing, Non-Competitive Negotiation may also be used, as prescribed by these rules, in order for a state agency to meet procurement objectives efficiently and effectively and in the best interests of the state.~~i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

~~(d) Regardless of the procurement methodology used, the procuring agency shall~~ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process~~ and~~, including any negotiations upon which each contract is based~~ and documentation that each contract is awarded to a responsible and responsive proposer~~, as prescribed by Central Procurement Office Policy.

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

(2) Request ~~For~~for Proposals (~~RFPs) -- the formal solicitation of written proposals~~"RFP").

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

~~(a) The procuring agency~~1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with ~~this rule and Department of Finance and Administration Office of Contracts Review~~these Rules and Central Procurement Office Policy~~ Guidelines. Failure by the state to comply with said rule and policy alone shall not be deemed a defect requiring rejection of all bids, said decision remaining in the discretion of the state.~~ The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

~~(b) An RFP shall set forth specific provisions in accordance with Department of Finance and~~i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.
~~Administration Office of Contracts Review Policy Guidelines including:~~

~~1. a clear and accurate description of the technical requirements for the service to be procured - the service technical requirements and scope shall not contain features which unduly restrict competition and shall be in sufficient detail to minimize the likelihood of requests by potential proposers for clarification;~~

~~2. directions regarding the submittal of proposals;~~

~~3. a timeline of the RFP process that specifies deadlines - service providers shall be given a reasonable time, as determined by the state, to consider the required scope of services and the proposal evaluation factors before proposals must be submitted;~~

~~4. state requirements and restrictions regarding the RFP;~~

~~5. a description of the factors to be considered in evaluating the proposals - factors may include but are not limited to service provider qualifications, experience, technical approach, and cost; and~~

~~6. a declaration of the contract terms and conditions which shall be required by the state.~~

~~(c) The procuring agency head shall~~ii) The Central Procurement Office or Delegated State Agency shall carefully consider all ~~individuals~~ persons involved with the development, formulation, drafting, or review of ~~an~~a RFP ~~or its scope of services~~ and safeguard against ~~a conflict~~any perceived or actual conflicts of interest.

~~(d) The Department of Finance and Administration shall~~iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall

approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. ~~All RFPs that would result in contracts requiring the Comptroller's approval shall also require the approval of the Office of the Comptroller of the Treasury before their public release. Further, any addenda, amendments, and clarifications to RFPs that would result in contracts requiring the Comptroller's approval shall be filed by the procuring agency with the Comptroller of the Treasury contemporaneously with their public release. An~~Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:

~~1. application~~ (I) Application of the requirements ~~of this rule and Department of Finance andAdministration~~of these Rules and Central Procurement Office ~~of Contracts Review~~ Policy ~~Guidelines~~;

~~2. adequacy~~(II) Adequacy of the scope ~~of service~~ description; and

~~3. adequacy~~(III) Adequacy of the RFP's assurance of:

I. Fairness to respondents;

~~(i) fairness to potential service providers; (ii) clear~~II. Clear, fair and open competition;

~~(iii) achievement~~III. Achievement of procurement objectives; and

~~(iv) protection~~IV. Protection of the ~~state~~State's interests.

~~(e) Upon approval, the procuring agency shall send an actual RFP document or a formal notice that the specific RFP has been released to a documented list of potential service providers. The procuring agency shall compile the list of potential service providers from those known to the agency staff. The procuring agency shall determine the number of service providers to include on the list by considering the nature of the service sought, the anticipated amount of the resulting contract, and the number of known service providers.~~iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.

~~(f) A procuring agency is not required to send an RFP or RFP Notice to more than a total of fifteen (15) service providers provided, however, that the procuring agency shall disseminate the RFP or RFP Notice as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines and to all that request the specific RFP. A general or standing request for notice of all RFPs or all RFPs of a given type of service shall not suffice as a request for a specific RFP and shall create no obligation on the state.~~

~~(g) To foster the integrity of the RFP evaluation process, each proposer shall be required to submit the Cost Proposal component of the~~

~~proposal in a sealed and labeled envelope separate from the Technical Proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.~~

~~1. The cost proposals shall not be opened until after the evaluation of the technical component is completed.~~(v) After the technical proposal evaluation is completed, the cost ~~proposals shall~~proposal may be opened and evaluated, and the scores of both ~~components shall~~proposals may be combined to arrive at a total evaluation score ~~provided, however, that the cost proposal shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by the state.2. Any proposal which fails to adequately separate the cost proposal components from~~. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal ~~shall be considered non-responsive and rejected by the state~~.

(~~h~~vi) Proposal evaluations shall be ~~conducted by state employees in such a manner as to reasonably~~impartial and ensure that all ~~proposals are impartially considered and state~~material requirements ~~are adequately~~of the RFP have been met.

~~1.~~ (I) Proposals shall be evaluated ~~by a team of at least three (3) state employees. For purposes of this rule, a state employee shall be defined as set forth by Tennessee Code Annotated,~~consistent with these Rules and Central Procurement Office Policy. ~~§ 8-42-101(3).~~

~~2.~~ (II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of ~~service providers~~persons making proposals~~,~~ and determine if the member has a conflict of interest ~~exists with a potential contractor, and~~with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by ~~Department~~Central Procurement Office Policy. The conflict of interest statement shall be retained ~~as~~in the procurement file ~~documentation~~.

~~3.~~ (III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the ~~service sought and detailed in the RFP document~~goods or services being procured.

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

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

(3) Invitation to Bid.

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

(4) Informal Written, Verbal or Telephone Quotations.

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

(5) Emergency Purchases.

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

(b) The circumstances leading to the emergency procurement;

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

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

(6) Sole Source Procurement.

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

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

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

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

4. ~~Neither the technical proposal nor the cost shall be the only criterion for a contract award recommendation. However, specific factors may be set forth as a criterion for determining which proposals shall be considered responsive to the RFP.~~ Whether items must be interchangeable or compatible with in-place items;

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

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

(7) Proprietary Procurement. Proprietary Procurement.
(8)

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

(8) Competitive Negotiation.

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

(9) Direct Negotiation-General Services Administration.

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

(10) Utility Contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Inspection of Solicitation File.

~~5. In the event that a proposal evaluation process results in two or more proposals receiving evaluation scores that tie for the rank of highest score, the State shall request best and final cost proposals from only those proposers with scores that tie for the rank of highest score. The State shall calculate new evaluation scores for the tying proposals by adding the original technical proposal scores to the recalculated cost proposal scores based on the best and final cost proposals. Should another tie result, the contract award shall be decided by coin toss.~~

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

~~6. To effect a contract award to a service provider other than the proposer receiving the highest evaluation score, the head of the procuring agency shall provide written justification for such an award and obtain the written approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury~~

(3) Cancellation of Solicitation or Rejection of Responses.

~~(i) The procuring agency shall communicate, clarify, and negotiate in the best interests of the state, provided that all communication is in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal.~~a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(~~j~~b) The ~~state~~Chief Procurement Officer shall have the ~~right, at its sole discretion, to amend an RFP in writing at any time. (k) The state shall have the right, at its sole discretion,~~discretion to reject any and all ~~proposals~~responses.

1. Any ~~proposal~~response that does not meet the requirements of ~~an RFP~~a solicitation may be considered ~~to be~~ nonresponsive~~,~~ and the ~~proposal~~response may be rejected.

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

3. ~~Whenever the state proposes to reject all proposals for a certain purchase, such action shall be taken only~~ All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:

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

(ii) ~~error~~ Error or defect in the ~~request for proposals;~~ solicitation;

(iii) ~~cessation~~ Cessation of need;

(iv) ~~unavailability~~ Unavailability of funds;

(v) ~~a determination by the affected agency that proceeding with the procurement would be detrimental to the best interests of the State, the reason for which must be documented and approved by the Commissioner of Finance and Administration and filed with the Comptroller of the Treasury.~~ Lack of adequate competition; or

~~(l) The state shall have the right, at its sole discretion, to cancel an RFP in its entirety and, at its sole discretion, to reissue or not reissue an RFP. The approval of the Commissioner of Finance and Administration shall be required prior to the cancellation of an RFP, and the Department of Finance and Administration shall file any such approved request with the Comptroller of the Treasury.~~

~~(m) All proposals and other material submitted in response to an RFP become subject to public record requirements of the state of Tennessee. Selection or rejection of a proposal does not affect its public records status. Upon the completion of the review and evaluation of proposals submitted in response to an RFP, evaluated proposals and associated materials shall be open for review by the public in accordance with Tennessee Code Annotated, § 10-7-504(a)(7).~~

~~(3) Competitive Negotiation — the informal process of verbal or written solicitation of proposals shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(a) The Competitive Negotiation process may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:~~

~~1. public need will not permit the delay incident to the RFP process;~~

~~2. no acceptable proposals have been received after an RFP process;~~

~~3. rates payable for the services are regulated by law;~~

~~4. the services to be procured are legal or expert witness services; or~~

~~5. the total cost of the services does not exceed $10,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.~~

~~(b) Prior to proceeding with a Competitive Negotiation process, the head of the procuring agency shall justify such a procurement method in writing, based on the criteria set forth in Rule 0620-3-3-.03(2)(a), and request and obtain the written approval of the Commissioner of Finance and Administration. Said request shall document the criteria and methodology to be used in evaluating offers in response to the solicitation.~~

~~(c) Upon approval to proceed with the Competitive Negotiation process, the procuring agency shall:~~

~~1. identify and contact at least three (3) potential service providers for Competitive Negotiation, provided, however, that the procuring agency shall contact minority, disadvantaged, and small business service providers as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines;~~

~~2. communicate the requirements of the state, solicit proposals, and clarify and negotiate as necessary in the best interests of the state, ensuring that all communication is conducted in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal;~~

~~3. document all proposals in response to the solicitation; and~~

~~4. select for contract award, in accordance with the approved evaluation criteria and methodology, the service provider meeting required qualifications, terms, and conditions and offering the best proposal in terms of qualifications, delivery, and cost.~~

~~(d) The procuring agency shall document the Competitive Negotiation process. The state agency shall provide a summary of said documentation upon submitting the contract for Department of Finance and Administration approval.~~

~~(c) Subsequent to selection and negotiation the agency shall write a contract and initiate contract approval in accordance with these rules.~~

~~(4) Alternative Competitive Procurement Method — an alternative process of procuring service shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(a) A procuring agency may devise and document procedures for an Alternative Competitive Procurement Method and use the methodology in a specific contractor selection process provided that:~~

~~1. prior, written approval of the Commissioner of Finance and Administration is obtained, and~~

~~2. prior, written approval of the Comptroller of the Treasury is obtained for procurement processes that will result in a contract requiring the approval of the Comptroller.~~

~~(b) The Department of Finance and Administration shall file approved requests to use an Alternative Competitive Procurement Method, and the reasons therefore with the Comptroller of the Treasury.~~

~~(5) Non-Competitive Negotiation - the negotiation of the terms of a service contract with only one service provider shall comply with the following requirements and with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(a) Non-Competitive Negotiation may be used when it is determined by the Commissioner of Finance and Administration that one of the following is true:~~

~~1. there is only one uniquely qualified service provider capable of performing the needed service;~~

~~2. the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly;~~

~~3. the selected service provider is an entity of the federal government;~~

~~4. the use of Non-Competitive Negotiation is in the best interests of the state; or~~

~~5. the total cost of the services for which the contract shall be written does not exceed $5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.~~

~~(b) Before beginning Non-Competitive Negotiation, the head of the procuring agency shall justify such a procurement in writing and request and obtain the approval of the Commissioner of Finance and Administration.~~

~~1. A Non-Competitive Negotiation request shall specify:~~

~~(i) the petition to procure the subject service by means of negotiation with only the one, identified service provider;~~

~~(ii) the service provider with whom the state would negotiate for the service; (iii) the service to be procured;~~
~~(iv) the specific Rule 0620-3-3-.03(5)(a) requirement(s) for Non-Competitive~~
~~Negotiation believed to be satisfied by the subject procurement;~~

~~(v) the justification for Non-Competitive Negotiation detailing sound, business reasoning why a competitive procurement of the given services is not appropriate and why Non-Competitive Negotiation is in the best interests of the state;~~

~~(vi) the maximum cost of the non-competitive procurement; and~~

~~(vii) the contract duration.~~

~~2. The request and approval for Non-Competitive Negotiation required by Rule 0620-3-3-~~
~~.03(5)(b) shall not be required when:~~

~~(i) the selected service provider is a state agency or any political subdivision of the state of Tennessee created and existing pursuant to the constitution and laws of Tennessee or any instrumentality of government created by one or more political subdivisions of Tennessee or by an act of the General Assembly except, (said request, justification, and approval of Non-competitive negotiation shall be required) when the selected service provider is a state institution of higher education (e.g., a component of the University of Tennessee or the Tennessee Board of regents college and university systems);~~

~~(ii) the selected service provider is an entity of the federal government; or~~

~~(iii) the total cost of the services for which the contract shall be written does not exceed~~
~~$5,000.00 or another amount which may be established, in writing, by the Commissioner of Finance and Administration and approved by the Comptroller of the Treasury provided that service requirements shall not be artificially divided so that a procurement meets this criteria.~~

~~(c) Upon approval to proceed with Non-Competitive Negotiation, the procuring agency shall negotiate the best possible terms and price with the service provider, write a contract, and initiate contract approval in accordance with rules of this chapter.~~

~~(d) By signing the contract, the procuring agency head indicates and confirms his or her determination that the contract price resulting from non-competitive negotiations is fair, reasonable, and, in the case of contracts with governmental entities, competitive.~~

~~(e) The procuring agency shall document the Non-Competitive Negotiation process.~~

~~(f) The Department of Finance and Administration shall file approved requests to use Non- Competitive Negotiation to procure services and the reasons therefore with the Comptroller of the Treasury.~~vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

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

~~(6) Grant Award - A grant in accordance with Rule 0620-3-3-.08(a) of this chapter shall not require justification or approval for any Competitive or Non-Competitive Negotiation but shall require a summary of the grantee selection process specifying whether it was a competitive or non-competitive process.~~5. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: ~~SS4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

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

(1) Proposal Bond.

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

Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

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

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

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

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

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

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

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

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

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

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

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

0690-03-01-.11 Award.

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

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

0690-03-01-.12 Protest Procedures.

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

~~0620-3-3-.04 PROTEST PROCEDURES. Tennessee Code Annotated, § 12-4-109(a)(1)(E) sets forth protest procedures regarding Requests for Proposals (RFPs) issued by the state~~
(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

~~(1) Any service provider who has submitted a proposal in response to a specific RFP subject to these rules and who claims to be aggrieved in connection with that specific RFP process may protest to the procuring agency head~~2) Protest After Notice of Intent to Award.

(a) ~~A protest shall be submitted~~ Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days ~~after such claimant knows or should have known of the facts giving rise to the protest~~from the beginning of the Open File Period.

1. ~~All proposers to an RFP should know and shall be deemed responsible for knowing the~~ On the first day of the Open File Period, all respondents are deemed to know all facts documented in the ~~state~~State's procurement files ~~on the day the procuring agency opens the RFP files for public inspection pursuant to Tennessee Code Annotated, § 10-7-504 (a)(7)~~.

2. ~~All protests shall be submitted in writing to the head of the procuring agency within the required seven (7) calendar day period. Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest~~ A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

3. ~~At the time of filing a notice of protest, the protesting party shall submit, to the procuring agency head, a bond payable to the State of Tennessee in the amount of five percent (5%) of the lowest cost proposal evaluated. Any protest submitted without the protest bond as required shall not proceed. A party may request an exemption from the protest bond requirement if it meets the qualifications of Tennessee Code Annotated Section 12-4-109(a)(1)(E)(v).~~ The Chief Procurement Officer may consider the following grounds for protest and no others:

~~(b)~~ ~~The protest bond shall be in form and substance acceptable to the State (see Rule 0620-3-3-.13 for protest bond sample form) and shall be immediately payable to the State of Tennessee conditioned upon a decision by the review committee that:~~i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

~~1. a request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the review committee, in violation of Tennessee Code Annotated, § 12-4-109 (a)(1)(E)(ii);~~
(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

~~2. the protest has been brought or pursued in bad faith; or~~
(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

~~3. the protest does not state on its face a valid basis for protest.~~
(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

~~(c) The State shall hold a protest bond for at least eleven (11) calendar days after the date of the final determination by the procuring agency head. If the protesting party appeals the procuring agency determination to the Review Committee, the head of the procuring agency shall hold~~y) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

~~said protest bond until instructed by the review committee to either keep the bond or return it to the protesting party.~~

~~(d) A written protest to the procuring agency head shall enumerate and detail all issues and associated reasoning that the protestor wishes to be considered and requests judgments to be rendered upon by the state.~~

~~(e) Upon knowledge of any protest subject to these rules, the procuring agency shall notify and provide a copy of the written protest to the Department of Finance and Administration Office of Contracts Review.~~

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

~~(f) The procuring agency shall have no more than~~

5. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days ~~from receipt of a protest to resolve the protest unless the protestor and the procuring agency agree upon an extension of this time. The final determination of the procuring agency shall be given in writing. Said determination shall be submitted to the protestor and the Department of Finance and Administration Office of Contracts Review.~~, or consents in writing to a direct appeal to the Protest Committee.

~~(2) The protestor may appeal the procuring agency head's decision to the Review Committee within seven (7) calendar days from the date of the decision. The protestor's written request for consideration of the~~

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

~~(a) meet~~

(i) Meet the requirements of ~~Tennessee Code Annotated, § 12-4-109(a)(1)(E), et seq.~~T.C.A. § 4-56-103;

~~(b) be~~ ii) Be delivered to ~~both the procuring agency head and the Commissioner of Finance and Administration~~the Chief Procurement Officer and the Comptroller of the Treasury; and,

~~(c) enumerate and detail all issues raised in the initial protest that the protester wishes to be considered and requests judgments to be rendered upon by the Review Committee.~~iii) Raise only grounds that were raised before the Chief Procurement Officer.

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

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

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

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

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

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

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

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

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

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

(2) Term Contract-General

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

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

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

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

(3) No Cost Contracts

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

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

(4) Revenue Contracts

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

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

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the

general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

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

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

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

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

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

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

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

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

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

(2) Grant Budget.

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

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central

Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(3) The protestor shall provide no less than fifteen (15) copies of each exhibit or document upon introduction of such at the meeting of the Review Committee.~~
Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

~~Authority: T.C.A. §§4-5-202 and 12-4-109(a)(1)(A)(ii), (iii) and (iv). Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed April 18, 1994; effective August 28, 1994. Amendment filed November 8, 2001; effective March 30, 2002.~~
0690-03-01-.16 General Requirements of Contracts.

~~0620-3-3-.05 CONTRACT FORM.~~ (1) The purpose of a written contract is to ~~embody, in writing,~~reduce the ~~complete~~parties' agreement ~~between parties. No terms shall be left to an unwritten understanding. A contract~~to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions ~~for~~of a contract subject to these ~~rules~~Rules shall be written, in form and content, in accordance with ~~Department of Finance and Administration~~Central Procurement Office ~~of Contracts Review Policy Guidelines.~~. Except as otherwise provided by ~~the rules of this chapter, a contract subject to these rules~~these Rules, all contracts shall meet the following requirements:

(~~1~~a) The ~~contractor~~Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The ~~contractor~~Contracting Party's duties may include, but are not limited to~~, the~~ type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.

(~~2~~b) The ~~state~~State's duties shall be clearly defined and detailed in accordance with ~~Department of Finance and Administration~~Central Procurement Office ~~of Contracts Review Policy Guidelines.~~. Contract terms shall clearly indicate the maximum liability ~~of~~, as applicable, to the ~~state~~State under the contract. The ~~state~~State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the ~~period~~term of the contract.

(~~3~~c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the ~~state,~~ State shall be written ~~as special terms and conditions, in~~ in accordance ~~with Department of Finance and Administration Office of Contracts Review~~ with Central Procurement Office Policy ~~Guidelines~~.

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

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.

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

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

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

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

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

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

(2) Necessary Contract Clauses for All Contract Types.

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

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

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

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

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

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

(t) Debarment and Suspension.

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

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

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

destruction of records, making false statements, or receiving stolen property;

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

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

2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

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

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

(b) Limitation of Liability.

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

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

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

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

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

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief

Procurement Officer determines that doing so is in the best interests of the State.

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

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

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

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

~~(4) A Contract Summary Sheet, as required by Department of Finance and Administration Office of Contracts Review, shall be attached to the face of each original copy of a contract. Said Contract Summary Sheet shall remain attached to each copy of the contract whether held by the Division of Accounts, the procuring agency, or the contractor.~~iii) The conditions in the market place that justify modification of the necessary contract clause; and

~~(5) All contracts subject to these rules shall specifically state: "The Contractor [Grantee] hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract [Grant] or in the employment practices of the Contractor [Grantee] on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor [Grantee] shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination."~~iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

~~(6) All contracts subject to these rules shall specifically state: "The Contractor [Grantee] shall maintain documentation for all charges against the State under this Contract [Grant]. The books, records, and documents of the Contractor [Grantee], insofar as they relate to work performed or money received under this Contract [Grant], shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles."~~c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: ~~§§4-5-202, 12-4-109, 4-325; Subsection 2, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

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

~~0620-3-3-.06 CONTRACT APPROVAL. A contract subject to these rules~~
(1) All contracts and amendments shall be ~~written~~in writing and approved in accordance with ~~this rule and Department of Finance and Administration Office of Contracts Review~~these Rules and Central Procurement Office Policy~~Guidelines~~.

(~~1~~2) The ~~procuring agency~~Procuring Agency shall initiate approval of a contract or ~~a contract~~an amendment by delivering the contract or amendment, signed by the contract parties, to ~~the Department of Finance and Administration Office of Contracts Review~~the Central Procurement Office as prescribed in Central Procurement Office Policy.

~~(2)A contract or contract amendment subject to theserules shall be subject to the final approval of theCommissioner of Finance and Administration.~~
~~Administration Office of Contracts Review shall:Accordingly, the Department of Finance and~~(a) ~~A base contract (the original contract prior to any amendments) shall be submitted with:~~

~~1. documentation of the procurement method and other procurement documentation which may be required by these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines; and~~

~~2. an approved copy of any request which may have been made for an exception to these rules or a deviation from Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(b) A contract amendment shall be submitted with:~~

~~1. a copy of the base contract and all previous amendments to the base contract; and,~~

~~2. if applicable, a new, written request to the Commissioner of Finance and Administration justifying the change in terms by means of Non-Competitive Negotiation (in accordance with Rule 0620-3-3-.07(1)); the Department of Finance and Administration shall file approved requests for non-competitive negotiation with the Comptroller of the Treasury.~~

~~(Rule 0620-3-3-.06, continued)~~ A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

~~(a)provide~~1. Provide technical assistance toward the achievement of procurement goals and protection of the ~~state~~State's interests; and
~~(b)~~
~~assign a unique contract number to each contract;~~
~~(c)~~
~~coordinate a process whereby funding availability is certified for each contract;~~
~~(d)~~
~~review contract documents for Commissioner of Finance and Administration approval; and~~
~~(e)~~

~~coordinate~~2. Manage the review ~~for~~process to secure approval by other officials required by these ~~rules~~Rules.

(3)
~~Upon~~ Certain contracts require the approval ~~by the Commissioner of Finance and Administration, a contract shall be fully approved, with~~of the following ~~exceptions~~officials in addition to the Chief Procurement Officer:

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

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

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

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

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

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

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

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

1. ~~provisions~~ Provisions for training ~~state employees (except as provided by Rule 0620-3-3-.07(21))~~State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
2. ~~provisions~~ Provisions permitting the procurement of services from an individual.
~~(4) Upon final approval of a contract document requiring expenditures by the state, the Department of Finance and Administration Division of Accounts shall file the contract document with original signatures and record it in the State of Tennessee Accounting and Reporting System.~~

~~(5) Upon final approval of a no cost contract or a revenue contract, the Department of Finance and Administration Office of Contracts Review shall return the original contract to the subject state agency.~~e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: ~~§§4-5-202, 4-325; Subsection 2, 12-4-109, 12-4-110, and Chapter 601 of the Public Acts of 1976.~~T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.
~~Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.07 GENERAL REQUIREMENTS. All service contracting subject to these rules shall follow the policy set forth in the following general requirements.~~

~~(1)~~ 0690-03-01-.19 General Requirements of Contract Amendments~~.~~.

(1) A contract amendment is a written contract document that ~~changes, adds, or deletes~~modifies or supplements one or more terms or conditions of ~~an existing contract. It shall be the practice of the state to enter only into contracts that are complete and thorough. However, during the course of a contract, it may become necessary to change, add to, or delete from the terms and conditions of the contract.~~a contract and meets the following:

(a) A contract amendment shall meet the requirements of these ~~rules and Department of Finance and Administration Office of Contracts Review~~Rules and Central Procurement Office Policy ~~Guidelines~~ and shall clearly detail the additions, deletions, and modifications to the subject contract.

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

(c) ~~If a contract amendment adds~~ If any change to the Base Contract results in a change to the ~~original base contract~~ scope of work, ~~or~~ extends the contract term (of a contract that did not provide for a term extension), or ~~if a contract amendment~~ increases the maximum liability of a contract ~~entered on the basis of Non- Competitive Negotiation, the head of the procuring agency~~, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing ~~and request and obtain the approval of the Commissioner of Finance and Administration. The Department of Finance and Administration shall file such approved requests and the reasons therefore with the Comptroller of the Treasury~~. The amendment and justification is subject to the approval of the Chief Procurement Officer.

(d) A contract amendment shall require the approval of the same officials required for approval of the ~~base contract.~~ Base Contract. If the amendment changes the scope or the terms of the ~~base contract~~Base Contract in such a manner as to require additional review ~~by one or more officials in accordance with Rule 0620-3-3-.06(c)~~as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require ~~that~~an additional approval. ~~approval.~~

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

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

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

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

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

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

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

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

0630-03-01-.21 Contractor Registration.

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

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

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

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

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

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

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

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

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

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

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

proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

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

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

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

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

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

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

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

0690-03-01-.25 Contract Termination.

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

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

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

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

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

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

(1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

(2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

(a) Allocating adequate staff and resources to contract management;

(b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

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

(d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;

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

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

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

(a) A contract management plan should include:

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

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

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

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

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

(a) Definition of needs;

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

(c) Basic record keeping;

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

(e) Interpersonal communication;

(f) Project management skills and tools; and

(2) Authorization to Begin Work - A signed contract affixed with the signature of all officials required for approval of the contract shall authorize a contractor or grantee to commence work on the subject scope of services. No official or employee of the state of Tennessee, except the Commissioner of Finance and Administration, only in cases of emergency, in writing, shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules. The Department of Finance and Administration shall document any such authorization and the reasons therefore and file the documentation with the Comptroller of the Treasury.g) Evaluation techniques, skills, and tools.

(3) Proposal Bond - In circumstances deemed appropriate by the procuring state agency, the state may require each proposer in response to a Request for Proposals (RFP) to provide the state with a bond payable to the state in the event that the proposer, if successful, fails to enter into a contract with the state in accordance with the terms of the RFP.5) Each State Agency shall implement such management practices as necessary to ensure:

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

(4) Communication and Negotiation - The procuring agency shall conduct such communication as it determines to be in the best interests of the state, provided that any communication, clarification, or negotiation which may take place regarding any service procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more service providers unfair advantage or unfairly enable one or more proposers to improve their proposals as a result.b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

~~(5) Contract Term - A contract shall be entered into for a period or contract term sufficient to adequately accomplish the state's procurement objectives, provided that the contract contains appropriate termination provisions for performance failures, funding changes, and state convenience. However, no contract term shall exceed sixty (60) months.~~6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

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

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

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

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

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

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

~~(6) Contract with a Corporation - If the contractor is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The state may require that a copy of the corporate charter be submitted prior to contract approval.~~b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

~~(7) Contract with Governmental Entities - A contract between a state agency subject to the rules of this chapter and another governmental entity (except another agency of the executive branch of Tennessee state government) shall contain an adequate description of the duties of each party, a statement of the contract term, and a statement of the maximum amount payable, and shall be drafted to comply with Department of~~

~~Finance and Administration Office of Contracts Review Policy Guidelines. An agreement between state agencies may be drafted as a contract complying with Department of Finance and Administration Office of Contracts Review Policy Guidelines or may be executed by means of some other instrument to effect the understanding.~~
Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

~~(8)~~ 0690-03-01-.28 Contract with ~~a State Employee~~Current or ~~a~~ Former State Employee~~. A state agency~~.

(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a ~~state~~State employee.

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

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

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

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

(~~b~~2) A ~~state~~State employee may be compensated for performing services for a ~~state~~State agency other than the ~~state~~State agency employing the individual (e.g., a ~~state~~State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-~~3-2~~03-02, et seq., and not the ~~rules~~Rules of this chapter.

~~(9) Certification of Necessity, Funding, and Contractor Eligibility -- The head of any state agency contracting with a service provider outside Tennessee state government shall determine and indicate, by signing the contract or Authorization to Vendor, that:~~

~~(a) the services are in fact needed;~~

~~(b) the services cannot be satisfactorily or efficiently performed by employees of the state of Tennessee;~~

~~(c) funds have been appropriated to meet the resulting financial obligations of the state for the services, and the procuring agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and~~

~~(d) the subject contractor is eligible, subject to these rules and any applicable federal or state requirements, to contract with the state for provision of the subject services.~~
~~(10) Contractor Registration - Proposers need not be registered with the state to make a proposal. However, all service providers with whom the state of Tennessee contracts for services pursuant to these rules~~

~~shall be registered as required by the Department of Finance and Administration Office of Contracts~~
~~Review prior to approval of a contract.~~

~~(11) Grantee Audit Requirement - Every person or entity receiving funds pursuant to a grant contract shall cause to be performed an audit of all its programs funded by grant contracts as required by said contracts, however, it is not intended that the existence of more than one grant contract or source of funds for a single grantee shall necessitate more than one audit in a single audit period.~~

~~(12) Hiring of Employees - State employees shall be hired through the merit system of the Department of Personnel. All contracts with an individual and all Departmental Purchase Authorities shall be reviewed for approval by the Commissioner of Personnel to determine compliance with this policy.~~

~~(13) Hold Harmless Prohibition - The state shall not agree by contract to indemnify or hold a contractor harmless for any liability arising from a contractual relationship.~~

~~(14) Incorrect Proposal Information - If the state determines that a proposer has provided, for consideration in a contractor selection process or in negotiations, information which the proposer knew or should have known was materially incorrect, the subject proposal may be determined non-responsive, and the proposal may be rejected.~~

~~(15) Payments - Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by state laws and regulations. Under no conditions shall the state be liable for payment of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before the contract start date specified by the contract or before contract approval by state officials as required by applicable statutes and rules of the state of Tennessee - except, in accordance with Rule 0620-3-3-.07(2), the Commissioner of Finance and Administration shall have the authority to authorize a contractor or grantee to commence work before a signed contract has been completely approved according to these rules.~~

~~(a) All contracts, in which the state is to make payment(s) to the contractor, shall provide that payments are to be made upon submittal of invoices by the contractor, after performance of the portion of the service which each payment represents, except that, grants may provide~~

~~for advance payments in accordance with Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

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

~~(c) A contract subject to these rules may provide for incentive payments. An incentive shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is explicitly based upon contractor performance at a specified level beyond that which is minimally required.~~

~~(d) A contract subject to these rules shall not provide for the payment of a bonus. A bonus shall be defined as a payment, in addition to that which is required by a contract for minimally required performance, that is not based on contractor performance at a definitively specified level beyond that which is minimally required.~~

~~(e) The procuring agency shall maintain adequate documentation to support all payments.~~

~~(16) Performance Bond -- In circumstances deemed appropriate by the procuring agency, the state may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these rules.~~

~~(17) Proof of Insurance -- As deemed appropriate, the state may require a potential contractor to provide proof of appropriate insurance prior to entering a contract subject to these rules.~~

~~(18) "Responsible Proposer" shall be defined as a proposer that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.~~

~~(19) "Responsive Proposer" shall be defined as a proposer that has submitted a proposal that conforms in all material respects to the Request for Proposals.~~

~~(20) Signature Authority -- Each state agency shall file, with and in a form acceptable to the Department of Finance and Administration Office of Contracts Review, documentation detailing the actual signature of the head of the agency and the agency head's signature as written by any other persons authorized to sign service contracting documents on behalf of the agency head.~~

~~(21) Training of State Employees -- All contracts with provisions for training of state employees shall require the approval of the~~

~~Commissioner of Personnel. This rule shall not apply to contracts for systems development that provide for state employee training on the resulting system.~~

~~(22) Travel Reimbursements - Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and rules set forth in the State Comprehensive Travel Regulations as amended. The limits and rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the state of Tennessee at "in-state rates" and for the reimbursement of travel expenses incurred outside the state of Tennessee at "out-of-state rates."~~

~~Authority: §§4-5-202, 4-325, Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.08 SPECIAL CASES.~~

~~(1) Grant - A Grant shall be defined as a contract used to effect an award of funding or property to a grant recipient or grantee. A Grant shall benefit the general public or some population of the general public. Deliverables pursuant to a Grant Contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.~~

~~(a) A Grant shall represent one of the following:~~

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

~~2. a contract passing through a federal award which specifically identifies by name a grantee or subrecipient; or~~

~~3. a contract effecting an award to fund work toward the completion of an activity or program which could not otherwise be more advantageously procured under a fee-for- service type contract - a grant representing this type of award must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.~~

~~(b) A Grant as defined in this rule shall be made by use of one of two grant contract types as follows:~~

~~1. Cost Reimbursement Grant - a grant contract in which payment(s) to the grantee shall be limited to reimbursement for actual, reasonable, and necessary cost as determined by the state and in accordance with an approved grant budget.~~

~~(i) A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the grantor and the~~

~~grantee as defined by Department of Finance and Administration Policy 22.~~

~~(ii) A Cost Reimbursement Grant contract shall detail the state approved Grant Budget.~~

~~(I) A Grant Budget shall be defined as a schedule itemizing one or more specific activities or purposes under the Grant along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant and that total shall equal the maximum liability of the Grant.~~

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

~~(iii) The grantor state agency shall conduct analysis and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated.~~

~~(iv) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for non- competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.~~

~~(v) A Cost Reimbursement Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~2. Endowment Grant - a Grant contract effecting an award and conveyance of funds or property to a grantee for a particular purpose such that will benefit the general public or some population of the general public.~~

~~(i) An Endowment Grant's essential requisites are: (I) the state's authority to make the Grant; (II) the intention of the state to make an endowment award free of conditions beyond the specified purpose of the grant; (III) the state's offer of an endowment award to the grantee; (IV) the grantee's acceptance of the endowment award; and (V) the grantee's fulfillment of the Grant's specific purpose.~~

~~the operation of state or federal programs and do not involve the management and implementation of a state or federal program.~~

~~(iii) An Endowment Grant shall not create a subrecipient relationship between the state and the grantee as defined by Department of Finance and Administration Policy~~

~~22.~~

~~(iv) An Endowment Grant must be determined to be appropriate and in the best interests of the state by the Commissioner of Finance and Administration.~~

~~(v) The grantor state agency shall document the grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for non- competitive selections. The state agency shall provide a summary of said documentation to the Department of Finance and Administration Office of Contracts Review with the grant contract upon request for approval.~~

~~(vi) An Endowment Grant shall cite the state's authority to make the Grant.~~

~~(vii) An Endowment Grant contract shall be written, signed by the parties, and approved in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(2) No Cost Contract - A no cost contract shall be used to formalize the exchange of services which does not result in a pecuniary obligation between the state and the contractor. Prior to proceeding with any procurement of services under a no cost contract, the procuring agency shall obtain approval of the Commissioner of Finance and Administration. If the request to enter into a no cost contract is approved, the agency shall proceed with the procurement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(3) Revenue Contract - A revenue contract shall be used to formalize an agreement in which a state agency provides specific deliverable services for monetary compensation. Prior to proceeding with any revenue contract negotiation, the state agency must obtain approval of the Commissioner of Finance and Administration. If the request to enter into a revenue contract is approved, the agency shall proceed with the agreement in accordance with these rules and Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, and Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.09 DELEGATED AUTHORITY. A Delegated Authority to make specific service agreements without further approval shall be effective upon the approval of the Commissioner of Finance and Administration and the Comptroller of the Treasury. No grant, loan, purchase, or agreement shall be initiated and no obligation shall be incurred under a Delegated Authority prior to the delivery of an approved copy of the authority to the subject state agency.~~

~~(1) Delegated Grant Authority -- A Delegated Grant Authority shall give approval to a state agency to issue grants for an individual program within specified limits and guidelines.~~

~~(a) A Delegated Grant Authority may be approved where:~~

~~1. the program needs and category of services are such that adequate guidelines can be developed to direct the agency issuing a number of similar grants; and~~

~~practicality in individual review by the Department of Finance and Administration Office of Contracts Review.~~

~~(b) A Delegated Grant Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(c) No changes shall be made to the approved grant form detailed by the Authority without a formal amendment of the approved Delegated Grant Authority.~~

~~(2) Delegated Loan Authority -- A Delegated Loan Authority shall give approval to a state agency to loan funds and to enter into loan agreements with individuals or organizations in accordance with a state or federally legislated program. A Delegated Loan Authority shall set forth all provisions required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(3) Delegated Purchase Authority -- A Delegated Purchase Authority shall give approval to a state agency to purchase services for an individual program, within specified limits and guidelines.~~

~~(a) A Delegated Purchase Authority may be approved where all of the following are true:~~

~~1. the subject service needs are sporadic, and it is not possible to determine in advance their volume, delivery, or exact costs;~~

~~2. it is impractical to award one or more fee-for-service contracts for the category of services with compensation based upon unit or milestone rates;~~

~~3. the program needs and general categories of services are such that adequate guidelines can be developed to direct the agency in procuring services;~~

~~4. the procurement terms, conditions, and criteria to be followed by the agency in conducting each purchase shall be of such uniformity that the approval by the Commissioner of Finance and Administration of each individual purchase is not necessary;~~

~~5. the individual purchases involved are such that individual review by the Department of~~

~~Finance and Administration Office of Contracts Review is impractical; and~~

~~6. the procuring agency staff has made appropriate inquiries and assured the fairness of the maximum rates detailed in the authority.~~

~~(b) A Delegated Purchase Authority shall set forth all provisions and limitations required by the Department of Finance and Administration Office of Contracts Review Policy Guidelines.~~

~~(c) All purchases made pursuant to a Delegated Purchase Authority shall be made by the use of a written authorization to vendor approved by the Commissioner of Finance and Administration. No changes shall be made to the approved authorization to vendor without a formal amendment of the approved Delegated Purchase Authority.~~

~~(4) Other Delegated Authority - Upon the establishment of specific guidelines, criteria, and procedures, other forms of Delegated Authority may be used to give approval allowing a state agency to enter agreements for an individual program within specified limits and guidelines. Notwithstanding the foregoing, all delegated authorities shall conform with the policy expressed in these rules.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.10 CONTRACT MANAGEMENT. The procuring state agency shall be responsible for the management of its contracts.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.11 CONTRACT TERMINATION. If a procuring agency determines it to be in the best interests of the state to terminate a contract for service before the contract end date, either for cause or convenience, the head of the procuring agency shall request and obtain the approval of the Commissioner of Finance and Administration prior to any notice of contract termination. The Department of Finance and Administration shall file approved requests for contract termination with the Comptroller of the Treasury.~~

~~Authority: §§4-5-209, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.12 EXCEPTIONS TO RULES. The Commissioner of Finance and Administration shall have the authority to make exceptions to the rules~~

~~of this chapter. The Department of Finance and Administration shall file approved exceptions to these rules and the reasons therefore with the Comptroller of the Treasury.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.13 APPENDIX I OF RULE 0620-3-3-.04. A Protest Bond may be presented to the state in form and substance compliant with the following Protest Bond format. Any Protest Bond presented to the state that represents a deviation from the following format shall be considered for acceptability by the state on a case-by-case basis.~~

~~PROTEST BOND~~

~~The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. The bond shall have certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached.~~

~~KNOW ALL BY THESE PRESENTS: That we,~~

~~(Name of Protestor)~~

~~(Address of Protestor)~~

~~as the Party filing a protest of the State of Tennessee's determination(s) regarding a Request for Proposals (RFP) process, hereinafter called the Protestor, and~~

~~(Name of Surety)~~

~~(Address of Surety)~~

~~as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Obligee, hereinafter called the Obligee, and in the penal sum of~~

~~(Dollar Amount of Bond)~~

~~good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.~~

~~BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS: WHEREAS, the Obligee has issued a Request for Proposals bearing the RFP Number:~~

~~(RFP Number)~~

~~AND, the Protestor, as an actual proposer to the RFP, claims to be aggrieved in connection with said RFP process;~~

~~AND, the signature of an attorney or the Protestor on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;~~

~~AND, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protestor posts a protest bond, the Protestor does file this protest bond payable to the Obligee with a notice of protest regarding the subject RFP process;~~

~~AND, the Obligee shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination on the protest by the head of the affected agency;~~

~~AND, if the Protestor appeals the affected agency head's determination on the protest to the Review Committee, in accordance with subsection Tennessee Code Annotated, § 12-4-109(a)(1)(E)(vii), the head of the agency shall hold said protest bond until instructed by the Review Committee as to its disposition.~~

~~NOW, THEREFORE, this obligation or bond shall remain in full force and effect conditioned upon a decision by the Review Committee that:~~

~~1. a request for consideration, protest, pleading, motion, or other document is signed by an attorney or the Protestor, before or after appeal to the Review Committee, in violation of Tennessee Code Annotated, § 12-4-109(a)(1)(E)(ii);~~
~~2. the Protestor has brought or pursued the protest in bad faith; or~~
~~3. the Protestor's notice of protest does not state on its face a valid basis for protest.~~

~~In which case, this obligation or bond shall be immediately payable to the Obligee. Otherwise, this obligation or bond shall be null and void.~~

~~IN WITNESS WHEREOF the Protestor has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers,~~

~~on this day of in the year .~~

~~WITNESS:~~

~~(Name of Protestor)~~

~~(Authorized Signature of Protestor)~~

~~(Name and Title of Signatory)~~

~~(Name of Surety)~~

~~(Signature of Attorney-in-Fact)~~

~~(Name of Attorney-in-Fact)~~

~~(Tennessee License Number of Surety)~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Amendment filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.14 REPEALED.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Repeal filed November 8, 2001; effective March 30, 2002.~~

~~0620-3-3-.15 REPEALED.~~

~~Authority: §§4-5-202, 4-325; Subsection 2, 12-4-109, Chapter 601 of the Public Acts of 1976. Administrative History: Original Rule filed March 2, 1977; effective April 1, 1977. Repeal filed November 8, 2001; effective March 30, 2002.~~

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

3

~~RULES OF DEPARTMENT OF FINANCE AND ADMINISTRATIONCHAPTER 0620-3-7 LIMITATIONS OF LIABILITY IN STATE~~

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~~Statement and Scope of Rules 0620-3-7-.02 Approval for~~

~~Limitation of Liability~~0690-03-01 Comprehensive Rules

and Regulations of the Central Procurement Office

0690-03-01.01 Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

0690-03-01-.02 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) "Contract" means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Capacity of the donor to make the gift;

2. Intention of the donor to make the gift;

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

4. Acceptance of the gift by the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not

limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Implementing these Rules;

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

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

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

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

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

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

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

(i) Resolving protests of Aggrieved Respondents;

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

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

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

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

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

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

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

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

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

2. Delegated Purchase Authority:

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

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

(2) General Requirements of Delegated Authorities:

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

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

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

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

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

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

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

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

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

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

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

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

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

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

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

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

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

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

(II) Adequacy of the scope description; and

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

I. Fairness to respondents;

II. Clear, fair and open competition;

III. Achievement of procurement objectives; and

IV. Protection of the State's interests.

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

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

instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.

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

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

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

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

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

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

(3) Invitation to Bid.

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

(4) Informal Written, Verbal or Telephone Quotations.

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

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen

cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

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

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

(6) Sole Source Procurement.

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

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

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

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

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

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

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

Proprietary Procurement.

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office

Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

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

(9) Direct Negotiation-General Services Administration.

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

(10) Utility Contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Inspection of Solicitation File.

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

(3) Cancellation of Solicitation or Rejection of Responses.

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

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

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

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

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

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

(ii) Error or defect in the solicitation;

(iii) Cessation of need;

(iv) Unavailability of funds;

(v) Lack of adequate competition; or

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

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

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

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

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

(1) Proposal Bond.

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

(2) Performance Bond.

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

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

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

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

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

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

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

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

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

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

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

0690-03-01-.11 Award.

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

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

0690-03-01-.12 Protest Procedures.

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

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than

seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

0690-03-01-.14 Contract Type.

(1) Term Contracts

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

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

(2) Term Contract-General

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

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

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

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

(3) No Cost Contracts

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

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

(4) Revenue Contracts

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

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

0690-03-01-.15 Grants.

(1) Grant Contract

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

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

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

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

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

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

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

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

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

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

(2) Grant Budget.

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

(4) Grantee Selection Process.

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

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a

particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.

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

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

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

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

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

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

(2) Necessary Contract Clauses for All Contract Types.

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

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

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

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

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

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

(t) Debarment and Suspension.

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

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

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

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

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

2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

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

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

(b) Limitation of Liability.

~~0620-3-7-.01 POLICY STATEMENT AND SCOPE OF RULES.~~

~~(1) The General Assembly of Tennessee, in Public Chapter 722 of 2000, authorized this Department to promulgate rules setting forth the circumstances when, and the procedures under which, the State would purchase services while accepting limitations of the liability of contractors for damage claims. Public Chapter 169 of 2007 provides that special permission under these rules is not required for agencies to grant limitations of liability unless the limitation is less than two times the value of the contract. Public Chapter 169 also provides that limitations of warranty can be accepted under the same standards as limitations of liability.~~

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

2. ~~(2) Public Chapter 722 of 2000 and Public Chapter 169 of 2007 forbid the State from accepting any limitation of the contractor's liability for intentional torts, criminal acts, or fraudulent conduct. Public Chapter 169 also forbids the State from accepting any limitation of liability for~~Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract ~~without permission of the Commissioner of Finance and Administration under procedures provided in these rules. Furthermore, neither the Public Chapter nor these regulations authorize the State to indemnify contractors for the acts or negligence of the contractors or third parties. All limitations of liability in State personal, professional, and consulting services contracts must be subject to these limitations.~~

~~(3) These rules shall apply to contracts for the purchase of services that are procured pursuant to the Rules of the Department of Finance and Administration, Chapter 0620-3-3, Personal Service, Professional Service, and Consultant Service Contracts. Approval under the procedure set forth in these rules is required only for requests for a limitation of liability for below twice the value of the contract, so that the term "limitation of liability" or "limitation of a contractor's liability" in section 0620-3-7-.02 of these rules means limitations below twice the value of the contract.~~

(4) ~~The value of the contract shall be established by the maximum liability of the State as set forth in the contract. If there is no maximum liability or substantially similar provision in the contract, the Commissioner in his sole discretion will determine the value of the contract based on an assessment of the value of the goods and services received by the State under the contract.~~

~~*Authority: T.C.A. §§ 4-5-202 and 12-4-119. Administrative History: Original rule filed May 18, 2001; effective August 1, 2001. Amendment filed December 18, 2006; effective April 30, 2007. Repeal and new rule filed August 24, 2007; effective December 28, 2007.*~~

~~**0620-3-7-.02 APPROVAL FOR LIMITATION OF LIABILITY.**~~

(1) ~~Approval Timeliness.~~

(a) ~~Any request to permit the limitation of contractor liability in a state contract for services must be made and a decision made thereon at the appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the state in competitive procurements.~~are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(b) ~~Generally, this shall require that such a request be made and a decision rendered prior to the procuring agency request for Department of Finance and Administration approval of the subject procurement method (and a copy of any such approval shall be presented with this request).~~

(c) ~~In a formal Request for Proposals process, however, a procuring agency may determine to request approval for a limitation of liability after receiving written comments from potential proposers pursuant to the process. In which case, the request to limit liability shall be made and a decision rendered prior to the procuring agency request for Department of Finance and Administration approval to amend the Request for Proposals (and a copy of any such approval shall be presented with this request).~~Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

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

(a) ~~(d)~~ The ~~agency~~Procuring Agency may request, and the ~~Department of Finance and Administration may authorize, initiation of a new procurement process including a contractor's limitation of liability~~Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the ~~applicable procurement process has failed to provide a qualified proposer.~~

~~(e) The State may accept a limitation of liability, subject to the conditions set forth in regulation 0620-3-7-.01 supra, in the course of competitive or non-competitive negotiations authorized by the Commissioner of Finance and Administration pursuant to regulation 0620-2-2-.08 (or any other grant of statutory or regulatory authority authorizing such negotiations).~~

~~(2) Approval Process~~Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) ~~(a) If any agency seeking to purchase services~~the Procuring Agency considers it necessary to ~~accept a limitation of liability~~modify a necessary contract clause, it shall submit a request to ~~use a limitation of liability clause to the Commissioner of Finance and Administration~~the Chief Procurement Officer to modify a necessary contract clause.

1. ~~(b)~~ The request ~~to use a limitation of liability shall be submitted under the signature of the procuring agency commissioner or chief executive. The request for approval~~for modification of a necessary contract clause shall contain justification that addresses the following:

(i) ~~1. the~~The text of the ~~limitation of liability~~new clause sought to be used;

(ii) ~~2.~~ If applicable, the risks ~~of liability~~ to the State created by the ~~services purchased under the contract~~new clause, and the impact on the State by allowing ~~a limitation;~~

~~3.~~ the new clause;

(iii) The conditions in the market ~~which~~place that justify ~~a limitation~~modification of ~~liability;~~

4. the necessary contract clause; and

(iv) The anticipated impact on the State~~'~~'s procurement if ~~limitation of liability~~modification to the necessary contract clause is not allowed~~; and~~.

(c) ~~5. the identification of one or more persons in the procuring agency familiar with the information set forth in the request to permit a limitation of liability.~~

~~(c) The request will be approved or disapproved by the Commissioner of Finance and Administration or authorized designee. The Commissioner may~~The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of ~~limitation of liability~~the modification under alternative language. Any approval ~~will~~shall be in writing and detail the specific ~~limitation of liability~~alternative language approved.

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

~~(3)~~ 0690-03-01-.18 Approval ~~Documentation~~Process of Contracts and Amendments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
2. Provisions permitting the procurement of services from an individual.

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

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

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

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

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

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

(c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in

a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.

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

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

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

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

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

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

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

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

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

0630-03-01-.21 Contractor Registration.

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

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

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

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

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

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

before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

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

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

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

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

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

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

(3) ~~(a) Said written approval permitting a limitation of liability shall be filed with the Comptroller of the Treasury. The written approval shall be presented along with the subject contracting documents submitted to the Department of Finance and Administration for approval processing.~~ Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

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

Authority: ~~*T.C.A. §§ 4-5-202; and 12-4-119. Administrative History: Original rule filed May 18, 2001; effective August 1, 2001. Amendment filed December 18, 2006; effective April 30, 2007.*~~ T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

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

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

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

0690-03-01-.25 Contract Termination.

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

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

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

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

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

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

(1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

(2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

(a) Allocating adequate staff and resources to contract management;

(b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

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

(d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;

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

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

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

(a) A contract management plan should include:

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

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

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

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

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

(a) Definition of needs;

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

(c) Basic record keeping;

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

(e) Interpersonal communication;

(f) Project management skills and tools; and

(g) Evaluation techniques, skills, and tools.

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

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

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

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

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

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

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

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

(7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations.

and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

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

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

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

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

(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.

(a) For the purposes of applying this Rule,

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

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

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

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

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

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Description	Rules Comparison 2
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
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Moved to	
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Padding cell	

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Total changes	959

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

~~CHAPTER 0620-3-8~~
~~CONTRACT MANAGEMENT AND SUBRECIPIENT MONITORING~~

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~~0620-3-8-.01 Scope~~ ~~0620-3-8-.04 Contract Management~~
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~~0620-3-8-.03 Contract Management and Subrecipient Monitoring Distinguished~~

~~0620-3-8-.06 Exceptions to Rules~~

~~0620-3-8-.01 SCOPE. These rules are promulgated pursuant to Tennessee Code Annotated, §12-4-109(d) which directs: (1) that each state department or agency shall be responsible for the effective management of all service contracts that it procures and enters; and (2) the Commissioner of Finance and Administration to develop regulations that define service contracting fundamentals.~~

~~These rules shall not, in any way, be construed to relieve a procuring state department or agency of the responsibility for the effective management of all its service contracts.~~

~~These rules shall not be construed to address the procurement of services by the state. Department of Finance and Administration Rules, Chapter 0620-3-3, Personal Service, Professional Service, and Consultant Service Contracts, govern the procurement of services by executive branch departments and agencies of the state of Tennessee.~~

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002.~~

~~0620-3-8-.02 APPLICABILITY.~~
0690-03-01.01 Applicability.

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

~~(2) The legislative and judicial branches of state government and the University of Tennessee and State~~

~~Board of Regents college and university systems shall have the option of: (a) following these rules, the policy and procedures specified herein; or~~
~~(b) developing their own service contracting procedures, provided that such are in compliance with the policy expressed in these rules.~~

~~(3) These rules shall not apply to:~~

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

(b) ~~contracts of the State Building Commission made in accordance with the provisions of~~ The University of Tennessee and the Tennessee Board of Regents college and university systems. ~~Tennessee Code Annotated, §4-15-102.~~

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

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

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

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

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

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

(i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement

Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.

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

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

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

0690-03-01-.02 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) "Contract" means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Capacity of the donor to make the gift;

2. Intention of the donor to make the gift;

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

4. Acceptance of the gift by the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(e) contracts for procurement of services in connection with the issue, sale, purchase, and delivery of bonds, notes and other debt obligations or the administration, safekeeping, and payment after delivery of such debt obligations by the state or any of its agencies.~~(tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

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

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

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

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

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

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

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

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

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

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

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

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

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

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

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

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

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

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

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

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

(ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet

the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Implementing these Rules;

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

(c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

(d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;

(e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;

(f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;

(g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;

(h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;

(i) Resolving protests of Aggrieved Respondents;

(j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and

(k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

(1) A Delegated Authority to procure goods or services, award grants, issue loans or enter into revenue or no cost contracts shall be effective upon the approval of the Chief Procurement Officer and the Comptroller of the Treasury. No grant, loan, purchase, or contract shall be initiated and no obligation shall be incurred on behalf of the State by a State Agency unless a Delegated Authority is granted by the Chief Procurement Officer and the Comptroller of the Treasury. The approval process requirements for a Delegated Authority shall be more particularly prescribed by Central Procurement Office Policy. The general requirements for each Delegated Authority are as follows:

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

(i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.

(ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

2. Delegated Loan Authority: A Delegated Loan Authority shall set forth the terms and conditions for making a loan and include all provisions required by Central Procurement Office Policy.

3. Delegated Purchase Authority:

(i) A Delegated Purchase Authority may be approved for procurement of goods or services, provided that such purchases and any resulting contracts from such purchases are subject to applicable provisions of these Rules and Central Procurement Office Policy.

(b) A Delegated Purchase Authority for the procurement of goods or services shall set forth all criteria, provisions and limitations consistent with Central Procurement Office Policy.

(2) General Requirements of Delegated Authorities:

(a) Each State Agency receiving a Delegated Authority shall file such documentation with the Chief Procurement Officer, in a form prescribed by Central Procurement Office Policy, which details the request for a Delegated Authority and the authorized signatories for the State Agency.

(b) All Delegated Authorities shall set forth all requirements prescribed by Central Procurement Office Policy.

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

(d) Records of the approval of the delegated authority shall be maintained by the Central Procurement Office

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or

services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.

(iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:

(I) Application of the requirements of these Rules and Central Procurement Office Policy;

(II) Adequacy of the scope description; and

(III) Adequacy of the RFP's assurance of:

I. Fairness to respondents;

II. Clear, fair and open competition;

III. Achievement of procurement objectives; and

IV. Protection of the State's interests.

(iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.

(v) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.

(vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.

(I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.

(II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.

(III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.

(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.

(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

(a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

(a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

(a) Whenever practicable, procurements should be competitive. Sole source procurements may be made when an item or service possesses specific characteristics that can only be filled by a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. All sole source procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

1. Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;

2. Whether the product or service is unique and available from only one source;

3. Whether the program requirements can be modified so that competitively procured goods or services may be used;

4. Whether items must be interchangeable or compatible with in-place items;

5. Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or

6. Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

(7) Proprietary Procurement. Proprietary Procurement.
(8)

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

(a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

(a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

(a) The description of the technical requirements for the goods or scope of services to be procured;

(b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;

(c) Clear and definitive technical requirements and scope that allow for open competition where practicable;

(d) The solicitation shall contain directions regarding the submittal of proposals;

(e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;

(f) Any requirements for proposal, performance or payment bonds;

(g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;

(h) A declaration of whether the contract award is subject to successful contract negotiation;

(i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and

(i) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

(a) Each solicitation shall contain a schedule indicating the dates and times for solicitation opening, the timeline for evaluation and the anticipated Award date. Once the state issues the Notice of Intent to Award, the Open File Period begins. The solicitation file shall be open for public inspection for seven (7) calendar days upon request. The Central Procurement Office or a Delegated State Agency shall give the requestor a reasonable opportunity to inspect the solicitation file. If there is no protest of the Notice of Intent to Award, the State will proceed with the contract award.

(3) Cancellation of Solicitation or Rejection of Responses.

(a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(b) The Chief Procurement Officer shall have the discretion to reject any and all responses.

1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.

3. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:

(i) Unreasonably high prices or failure of all responses to meet technical specifications;

(ii) Error or defect in the solicitation;

(iii) Cessation of need;

(iv) Unavailability of funds;

(v) Lack of adequate competition; or

(vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

4. Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.

5. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

(a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

(1) To ensure a transparent, consistent and equitable process in accordance with Central Procurement Office Policy, the Chief Procurement Officer may conduct communications as he or she determines to be in the best interests of the State, provided that any communication, clarification, or negotiation that may take place regarding any procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more respondents an unfair advantage or unfairly enable one or more respondents to improve their responses as a result and documented in the procurement file to support the final determination based on the information requested.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

(1) If the Central Procurement Office determines that a respondent has provided, for consideration in a contractor selection process or in negotiations, information that does not meet the technical requirements of the solicitation, where the respondent knew or should have known the submitted information was materially defective due to the omission of information or the submission of incorrect information, the subject response may be determined nonresponsive and rejected as prescribed in Central Procurement Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

(1) A respondent may withdraw or amend a response in writing prior to its opening. After responses are opened, a respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the respondent or as prescribed in Central Procurement Office Policy. Any decision to allow withdrawal or amendment of a response shall be documented in the solicitation file.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

(1) Each contract shall be awarded by the Chief Procurement Officer on behalf of the Central Procurement Office or by a Delegated State Agency where authority has been delegated in accordance with these Rules and Central Procurement Office Policy. Notice of Intent to Award shall be communicated in writing or electronic transmission to all respondents. The Chief Procurement Officer is authorized to award a contract if doing so is in the best interests of the State.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.

2. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

3. The Chief Procurement Officer may consider the following grounds for protest and no others:

(i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

4. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

5. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the

right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

6. A written protest that is filed with the Protest Committee shall:

(i) Meet the requirements of T.C.A. § 4-56-103;

(ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,

(iii) Raise only grounds that were raised before the Chief Procurement Officer.

7. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

8. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

(i) The final determination letter of a protest before the Chief Procurement Officer shall be reported to the Protest Committee and the Comptroller of the Treasury.

(ii) The final determination letter of a protest before the Protest Committee shall be reported to the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

(1) In accordance with Central Procurement Office Policy, communication and negotiation shall be conducted in a manner that is in the best interests of the State, provided that any communication, clarification, or negotiation so conducted does not undermine the procurement process as set forth in the solicitation, these Rules or Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

(a) Agency Term Contract - State Agencies may establish term contracts for specific goods or services. The resulting contract shall contain a maximum liability dollar amount that represents the estimated dollar volume as prescribed in the solicitation.

(b) Statewide Term Contract - The Central Procurement Office may establish statewide term contracts that all State Agencies must utilize and that may be used by local governments and higher education.

(2) Term Contract-General

(a) A term contract for more than a period of twelve (12) months may provide that the State has the right to cancel at any time for convenience by providing written notice to the Contracting Party.

(b) All term contracts shall contain a provision that provides for the termination of the contract at the end of any fiscal year in the event funds are not available.

(c) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Central Procurement Office. A report of all contracts awarded for a period longer than sixty (60) months in such format and at such interval determined requested shall be provided to the Comptroller of the Treasury.

(d) There shall be no pricing agreement other than in a contract between the State and a Contracting Party.

(3) No Cost Contracts

(a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.

(b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

(a) A "Revenue Contract" is a written contract where a State Agency provides specific deliverable services for monetary compensation. Prior to proceeding with any Revenue Contract negotiation, the State Agency must obtain the prior approval of the Chief Procurement Officer. If the request to enter into a Revenue Contract is approved, the State Agency shall proceed to procure the Revenue Contract in accordance with these

Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

(b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;

2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or

3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant - A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

3. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

(6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

(1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:

(a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.

(b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

(c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.

(d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on

behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.

(f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

(g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

(h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

(1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.

(2) Necessary Contract Clauses for All Contract Types.

(a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

(b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods

and services under the contract, including the Contracting Party's direct or indirect costs.

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

(d) Non- Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

(e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.

(f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.

(g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.

(h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.

(i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.

(j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

(k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

(l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

(m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

(n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.

(o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

(q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

(r) Annual Report and Audit. All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(s) Monitoring. All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(t) Debarment and Suspension.

1. All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provision shall act as a certification that the contracting party:

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

(iii) The conditions in the market place that justify modification of the necessary contract clause; and

(iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

0690-03-01-.18 Approval Process of Contracts and Amendments.

(1) All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.

(2) The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or

4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
2. Provisions permitting the procurement of services from an individual.

(e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-.19 General Requirements of Contract Amendments.

(1) A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:

(a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.

(b) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.

(c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The

amendment and justification is subject to the approval of the Chief Procurement Officer.

(d) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

(1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:

(a) The goods or services are in fact needed;

(b) The goods or services cannot be satisfactorily or efficiently provided by the State;

(c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and

(d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.,.C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

In order to be awarded a contract for goods or services, a vendor must submit appropriate paperwork to Finance and Administration, Division of Accounts, to receive payment.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

(1) Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.

(2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.

(3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

(4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.

(5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

(1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

(2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

~~(d) contracts to hire additional counsel for the state of Tennessee or any of its departments, institutions or agencies made in accordance with the provisions of Tennessee Code Annotated, §8-6-106.~~
Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

The Central Procurement Office shall be responsible for the management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts procured by the Central Procurement Office on behalf of the State Agency or within their delegated authority.

~~(e) instances where the state procures the services of an expert witness for any judicial or administrative proceeding.~~
Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

~~(4) Any part of these rules which may conflict with applicable federal regulations or provisions governing the use of federal grant funds may be waived by the Commissioner of Finance and Administration~~
0690-03-01-.25 Contract Termination.

~~(5) Any part of these rules which may conflict with applicable law shall be null and void.~~
If a State Agency determines it to be in the best interests of the State to terminate a contract before the contract end date, either for cause or convenience, the head of the State Agency shall request and obtain the approval of the Chief Procurement Officer prior to any notice of contract termination.

Authority: ~~T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002.~~T.C.A. § 4-56-102, T.C.A. § 4-56-105.

~~0620-3-8-.03 CONTRACT MANAGEMENT AND SUBRECIPIENT MONITORING DISTINGUISHED.~~
0690-03-01-.26 Exceptions to Rules.

~~(1) A service contract creates either a vendor relationship or a subrecipient relationship with the contractor. The nature of the business relationship with the contractor (i.e., vendor or~~

~~subrecipient), and not the type of contract (i.e., fee-for-service contract or a grant), controls whether a contractor is a vendor or a subrecipient. Direction for determining whether a contractual relationship is a vendor or subrecipient relationship is found in both Department of Finance and Administration Policy 22 and the federal Office of Management and Budget Circular A-133.~~
The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

~~(2) A procuring state agency is responsible for contract management of all vendor and subrecipient contracts under its purview. Additionally, contracts characterized by a subrecipient relationship are subject to subrecipient monitoring.~~
Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002.~~
0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

~~0620-3-8-.04 CONTRACT MANAGEMENT~~
(1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

~~(1) Each state department or agency shall be responsible for the effective management of all contracts under its purview. Contract Management is a state department or agency's on-going~~2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each ~~service~~ contract for efficiency, cost-effectiveness, and ~~service~~ provider accountability and results. Contract ~~Management~~ management may include, but is not limited to:

(a) ~~allocating~~ Allocating adequate staff and resources to contract management;

(b) ~~reviewing contractor~~ Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

(c) ~~communicating~~ Communicating with ~~contractors~~Contracting Parties to ensure maximum performance and intended results;

(d) ~~approving~~ Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law ~~for acceptable work~~;

(e) ~~maintaining~~ Maintaining records of each contract that ~~document~~ documents activities such as procurement, management, and subrecipient monitoring, if applicable; and

(f) ~~evaluating~~ Evaluating contract results in terms of the achievement of organizational objectives.

~~(2) Annual Contract Management Plan. Each state agency~~ 3) Each State Agency shall establish ~~an Annual ContractManagement Planan~~ annual contract management plan addressing the general management of ~~service~~ contracts for which it is responsible.

(a) ~~Content.~~ A contract management plan should include:

1. ~~information~~ Information about the specific staff positions and resources that will be assigned to contract management;

2. ~~a~~ A description of the organization of identified staff and resources for the contract management responsibility; and

3. ~~an~~ An explanation of how the contract management staff will review and supervise ~~contractor~~Contracting Party performance, progress, ~~and~~ contract compliance, and pricing.

(b) ~~Approval.~~ Before each calendar year for which the plan is applicable, the ~~commissioner~~Chief Procurement Officer or chief executive of the ~~subject state agency~~Delegated State Agency must approve the ~~Annual Contract Management Plan~~annual contract management plan and, before submitting any ~~service~~ contract for approval in that year, submit a copy to the ~~Department of Finance and Administration, Office of Contracts Review~~Central Procurement Office.

~~(3) Responsible Staff.~~ 4) Each ~~state agency~~State Agency should identify the specific staff responsible for the management of each ~~service~~ contract under its purview and ensure that such staff ~~have~~has adequate training. Such training may include:

(a) ~~definition~~ Definition of ~~service~~ needs;

(b) ~~service procurement~~ Procurement law, ~~rules~~Rules, and ~~regulations~~Central Procurement Office Policy;

(c) ~~basic~~ Basic record keeping;

(d) ~~program~~ Program specific goals, objectives, purpose, and responsibilities;

(e) ~~interpersonal~~ Interpersonal communication;

(f) ~~project~~ Project management skills and tools; and

(g) ~~evaluation~~ Evaluation techniques, skills, and tools.

~~(4) Contract Management Processes. Each state agency~~5) Each State Agency shall implement such management practices as necessary to ensure:

(a) ~~accountability~~ Accountability, results, and positive programmatic impact from ~~service~~ contracts (as opposed to mere contract compliance).

(b) ~~the~~ The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

~~(5) Contract Management Evaluation.~~ 6) The efficacy of each ~~state agency~~State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) ~~the~~ The procuring ~~state agency~~State Agency's program area~~(s)~~ having responsibility for each ~~service contracted;~~ contract;

(b) ~~the~~ The procuring ~~state agency's~~ State Agency's functional area~~(s)~~ having responsibility for internal controls, financial integrity, and internal audit;

(c) ~~the~~ The procuring ~~state agency~~State Agency's executives; and

(d) ~~the~~ The Comptroller of the Treasury (pursuant to his or her power to review and audit State government ~~entities~~ under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code ~~Annotated~~).

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002.~~

~~0620-3-8-.05 SUBRECIPIENT MONITORING.~~

(~~1~~7) Subrecipient ~~Monitoring~~monitoring is required, in addition to contract management, for the specific subset of ~~service~~ contracts and ~~grants~~ grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient ~~contractor~~'s compliance with the requirements of applicable ~~state and/~~State or federal programs, laws and regulations, and stated results ~~as well as~~. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with ~~state and/~~State or federal requirements. ~~Policies governing state government subrecipient contract monitoring are found in Department of Finance and Administration Policy 22, signed by the Commissioner of Finance and Administration and the Comptroller of the Treasury.~~

~~(2) Independence Required.~~

(a) Staff with subrecipient monitoring responsibilities must have ~~a separation of~~ duties separate from program staff to ensure independence and objectivity.

~~(3) Plan Required.~~ b) Each ~~state agency~~State Agency subject to these ~~rules~~Rules shall develop and obtain ~~Department of Finance and Administration~~Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan ~~is~~

~~detailed in Department of Finance and Administration Policy 22.~~will be established by Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.28 Contract with Current or Former State Employee.

(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.

(a) For the purposes of applying this Rule,

1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

~~Authority: T.C.A. §§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective July 29, 2002. Amendments filed April 29, 2005; effective August 26, 2005.~~

3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.

~~0620-3-8-.06 EXCEPTIONS TO RULES. The Commissioner of Finance and Administration shall have the authority to make exceptions to the rules of this chapter. The Department of Finance and Administration shall file approved exceptions to these rules and the reasons therefore with the Comptroller of the Treasury.~~

(2) A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

Authority: T.C.A. ~~§§4-5-202 and 12-4-109. Administrative History: Original rule filed March 4, 2002; effective~~§ 4-56-102, T.C.A. § 12-4-103.
~~July 29, 2002.~~

3

~~PROPOSED RULES OF THE~~0690-03-01 Comprehensive Rules and Regulations of the Central Procurement Office
~~DEPARTMENT OF FINANCE AND ADMINISTRATION~~

0690-03-01.01 Applicability.

(1) These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:

(a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.

(b) The University of Tennessee and the Tennessee Board of Regents college and university systems.

(c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.

(d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.

(e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.

(f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.

(g) These Rules shall not apply to contracts requiring State Building Commission approval.

(h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.

(i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.

(j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

(k) Notwithstanding anything in these Rules to the contrary, local government agencies are authorized to purchase through the Central Procurement Office pursuant to Central Procurement Office Policy. Requests may be made for one-time purchases or the establishment of agency term contracts. In addition, all items available on statewide contracts may be purchased by local government agencies and nonprofits.

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

(1) As used in these Rules, unless the context otherwise requires:

(a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.

(b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.

(c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

(d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.

(e) "Approval Process" means the process by which necessary State approvals are obtained.

(f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.

(g) "Base Contract" means the original written contract prior to any amendments.

(h) "Bid" means a response by a vendor to an invitation to bid.

(i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.

(j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

(k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

(l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.

(m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.

(n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.

(o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

(p) "Contract" means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

(q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

(r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.

(s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.

(t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.

(u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.

(v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.

(w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

(x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.

(y) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

(z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

(aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

(bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

(cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

1. Capacity of the donor to make the gift;

2. Intention of the donor to make the gift;

3. Completed delivery of the gift to or for the State, and

4. Acceptance of the gift by the State.

Nothing in this Rule shall be construed to mean that the State must accept any gift.

(dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term

"Goods" does not include leases, acquisitions, or disposals of an interest in real property.

(ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

(ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

(gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.

(hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.

(ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.

(jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

(kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.

(ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.

(mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

(nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.

(oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.

(pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

(qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.

(rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

(ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.

(tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

(uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.

(vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

(ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.

(xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.

(yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.

(zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

(aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing

a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

(ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.

(ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.

(eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.

(fff) "Response" means a written response to a solicitation for goods or services.

(ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.

(hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.

(iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

(jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

(kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.

(lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

(mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.

(nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.

(ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is

identified as the only qualified source available to the requisitioning authority.

(ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

(qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(rrr) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

(sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.

(ttt) "State Architect" means the person, who oversees the Office of the State Architect.

(uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

(vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.

(www) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.

(xxx) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

(1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.

(2) The duties and responsibilities of the Central Procurement Office shall include:

(a) Implementing these Rules;

(b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;

(c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

(d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;

(e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;

(f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;

(g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;

(h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;

(i) Resolving protests of Aggrieved Respondents;

(j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and

(k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

(1) A Delegated Authority to procure goods or services, award grants, issue loans or enter into revenue or no cost contracts shall be effective upon the approval of the Chief Procurement Officer and the Comptroller of the Treasury. No grant, loan, purchase, or contract shall be initiated and no obligation shall be incurred on behalf of the State by a State Agency unless a Delegated Authority is granted by the Chief Procurement Officer and the Comptroller of the Treasury. The approval process requirements for a Delegated Authority shall be more particularly prescribed by Central Procurement Office Policy. The general requirements for each Delegated Authority are as follows:

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

(i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.

(ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

2. Delegated Loan Authority: A Delegated Loan Authority shall set forth the terms and conditions for making a loan and include all provisions required by Central Procurement Office Policy.

3. Delegated Purchase Authority:

(i) A Delegated Purchase Authority may be approved for procurement of goods or services, provided that such purchases and any resulting contracts from such purchases are subject to applicable provisions of these Rules and Central Procurement Office Policy.

(b) A Delegated Purchase Authority for the procurement of goods or services shall set forth all criteria, provisions and limitations consistent with Central Procurement Office Policy.

(2) General Requirements of Delegated Authorities:

(a) Each State Agency receiving a Delegated Authority shall file such documentation with the Chief Procurement Officer, in a form prescribed by Central Procurement Office Policy, which details the request for a Delegated Authority and the authorized signatories for the State Agency.

(b) All Delegated Authorities shall set forth all requirements prescribed by Central Procurement Office Policy.

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

(d) Records of the approval of the delegated authority shall be maintained by the Central Procurement Office

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method

if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.

(iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:

(I) Application of the requirements of these Rules and Central Procurement Office Policy;

(II) Adequacy of the scope description; and

(III) Adequacy of the RFP's assurance of:

I. Fairness to respondents;

II. Clear, fair and open competition;

III. Achievement of procurement objectives; and

IV. Protection of the State's interests.

(iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.

(v) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.

(vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.

(I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.

(II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.

(III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.

(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.

(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

(a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

(a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

(a) Whenever practicable, procurements should be competitive. Sole source procurements may be made when an item or service possesses specific characteristics that can only be filled by a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. All sole source procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

1. Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;

2. Whether the product or service is unique and available from only one source;

3. Whether the program requirements can be modified so that competitively procured goods or services may be used;

4. Whether items must be interchangeable or compatible with in-place items;

5. Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or

6. Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

(7) Proprietary Procurement. Proprietary Procurement.
(8)

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

(a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

(a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority.

All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

(a) The description of the technical requirements for the goods or scope of services to be procured;

(b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;

(c) Clear and definitive technical requirements and scope that allow for open competition where practicable;

(d) The solicitation shall contain directions regarding the submittal of proposals;

(e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;

(f) Any requirements for proposal, performance or payment bonds;

(g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;

(h) A declaration of whether the contract award is subject to successful contract negotiation;

(i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and

(j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

(a) Each solicitation shall contain a schedule indicating the dates and times for solicitation opening, the timeline for evaluation and the anticipated Award date. Once the state issues the Notice of Intent to Award, the Open File Period begins. The solicitation file shall be open for public inspection for seven (7) calendar days upon request. The Central Procurement Office or a Delegated State Agency shall give the requestor a reasonable opportunity to inspect the solicitation file. If there is no protest of the Notice of Intent to Award, the State will proceed with the contract award.

(3) Cancellation of Solicitation or Rejection of Responses.

(a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(b) The Chief Procurement Officer shall have the discretion to reject any and all responses.

1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.

3. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:

(i) Unreasonably high prices or failure of all responses to meet technical specifications;

(ii) Error or defect in the solicitation;

(iii) Cessation of need;

(iv) Unavailability of funds;

(v) Lack of adequate competition; or

(vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

4. Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.

5. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

(a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

(1) To ensure a transparent, consistent and equitable process in accordance with Central Procurement Office Policy, the Chief Procurement Officer may conduct communications as he or she determines to be in the best interests of the State, provided that any communication,

clarification, or negotiation that may take place regarding any procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more respondents an unfair advantage or unfairly enable one or more respondents to improve their responses as a result and documented in the procurement file to support the final determination based on the information requested.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process-Determining Non-Responsiveness.

(1) If the Central Procurement Office determines that a respondent has provided, for consideration in a contractor selection process or in negotiations, information that does not meet the technical requirements of the solicitation, where the respondent knew or should have known the submitted information was materially defective due to the omission of information or the submission of incorrect information, the subject response may be determined nonresponsive and rejected as prescribed in Central Procurement Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

(1) A respondent may withdraw or amend a response in writing prior to its opening. After responses are opened, a respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the respondent or as prescribed in Central Procurement Office Policy. Any decision to allow withdrawal or amendment of a response shall be documented in the solicitation file.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

(1) Each contract shall be awarded by the Chief Procurement Officer on behalf of the Central Procurement Office or by a Delegated State Agency where authority has been delegated in accordance with these Rules and Central Procurement Office Policy. Notice of Intent to Award shall be communicated in writing or electronic transmission to all respondents. The Chief Procurement Officer is authorized to award a contract if doing so is in the best interests of the State.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the

Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.

2. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

3. The Chief Procurement Officer may consider the following grounds for protest and no others:

(i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

4. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

5. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

6. A written protest that is filed with the Protest Committee shall:

(i) Meet the requirements of T.C.A. § 4-56-103;

(ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and.

(iii) Raise only grounds that were raised before the Chief Procurement Officer.

7. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

8. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

(i) The final determination letter of a protest before the Chief Procurement Officer shall be reported to the Protest Committee and the Comptroller of the Treasury.

(ii) The final determination letter of a protest before the Protest Committee shall be reported to the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

(1) In accordance with Central Procurement Office Policy, communication and negotiation shall be conducted in a manner that is in the best interests of the State, provided that any communication, clarification, or negotiation so conducted does not undermine the procurement process as set forth in the solicitation, these Rules or Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

(a) Agency Term Contract - State Agencies may establish term contracts for specific goods or services. The resulting contract shall contain a maximum liability dollar amount that represents the estimated dollar volume as prescribed in the solicitation.

(b) Statewide Term Contract - The Central Procurement Office may establish statewide term contracts that all State Agencies must utilize and that may be used by local governments and higher education.

(2) Term Contract-General

(a) A term contract for more than a period of twelve (12) months may provide that the State has the right to cancel at any time for convenience by providing written notice to the Contracting Party.

(b) All term contracts shall contain a provision that provides for the termination of the contract at the end of any fiscal year in the event funds are not available.

(c) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Central Procurement Office. A report of all contracts awarded for a period longer than sixty (60) months in such format and at such interval determined requested shall be provided to the Comptroller of the Treasury.

(d) There shall be no pricing agreement other than in a contract between the State and a Contracting Party.

(3) No Cost Contracts

(a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.

(b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

(a) A "Revenue Contract" is a written contract where a State Agency provides specific deliverable services for monetary compensation. Prior to proceeding with any Revenue Contract negotiation, the State Agency must obtain the prior approval of the Chief Procurement Officer. If the request to enter into a Revenue Contract is approved, the State Agency shall proceed to procure the Revenue Contract in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

(b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;

2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or

3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant - A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

3. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

(6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

(1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:

(a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.

(b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

(c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.

(d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a

performance bond or surety deposit prior to entering a contract subject to these Rules.

(f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

(g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

(h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

(1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.

(2) Necessary Contract Clauses for All Contract Types.

(a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

(b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed.

All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

(d) Non- Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

(e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.

(f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.

(g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.

(h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.

(i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.

(j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

(k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

(l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

(m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

(n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.

(o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a

Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

(q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

(r) Annual Report and Audit. All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(s) Monitoring. All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(t) Debarment and Suspension.

1. All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provision shall act as a certification that the contracting party:

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any

time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

~~CHAPTER 0620-3-9~~
~~APPEALS PROCESS FOR PERSONS BARRED FROM STATE CONTRACTING FOR USE OF ILLEGAL IMMIGRANTS~~

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(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

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~~0620-3-9-01 PURPOSE AND SCOPE.~~
(iii) The conditions in the market place that justify modification of the necessary contract clause; and

~~Tennessee Code Annotated Section 12-4-124 provides that a person who is discovered to have knowingly utilized the services of illegal immigrants in the performance of a contract to supply goods or services to the state or other state entities shall be prohibited from contracting for or submitting a bid for any contract to supply goods or services to the state or other state entities for a period of one year from the date of discovery of the usage of illegal immigrant services. A person subject to such prohibition may appeal under a process to be established by the commissioner of finance and administration.~~
(iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

~~The purpose of this rule is to set forth the appeals process.~~
(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: ~~T.C.A. §§ 4-5-201 et seq; 12-4-124. Administrative History: New rules filed January 26, 2007;~~ T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124. ~~effective May 31, 2007.~~

0690-03-01-.18 Approval Process of Contracts and Amendments.

(1) All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.

(2) The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or

4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
2. Provisions permitting the procurement of services from an individual.

(e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-.19 General Requirements of Contract Amendments.

(1) A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:

(a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.

(b) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.

(c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.

(d) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

(1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:

(a) The goods or services are in fact needed;

(b) The goods or services cannot be satisfactorily or efficiently provided by the State;

(c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and

(d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105., .C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

In order to be awarded a contract for goods or services, a vendor must submit appropriate paperwork to Finance and Administration, Division of Accounts, to receive payment.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

(1) Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.

(2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.

(3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

(4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.

(5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

(1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform

services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

(2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

The Central Procurement Office shall be responsible for the management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts procured by the Central Procurement Office on behalf of the State Agency or within their delegated authority.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

If a State Agency determines it to be in the best interests of the State to terminate a contract before the contract end date, either for cause or convenience, the head of the State Agency shall request and obtain the approval of the Chief Procurement Officer prior to any notice of contract termination.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

~~0620-3-9-.02 NOTICE~~
0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

(1) ~~Each notice sent by the Commissioner of Finance and Administration declaring the prohibition required by Tennessee Code Annotated Section 12-4-124(b) shall be~~ The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

~~(a) Delivered to the contractor at the address listed in the contract for "contacts and communications." If there is no such address, notice should be delivered to an address provided in the contract or related correspondence, or to an address at which the contractor may be found.~~2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

~~(b) Delivery may be by certified mail, regular mail, fax, express mail, or hand delivery.~~
~~Proof that a contractor received notice may be established by a signed return receipt card, express mail delivery receipt, a fax confirmation sheet or an affidavit from a State employee establishing that the item was hand delivered to the contractor, or placed in first class mail to the contractor's address.~~a) Allocating adequate staff and resources to contract management;

~~(c) The notice shall contain the date or dates that the violation occurred, the date that the violation was discovered, and other information sufficient to provide notice to the contractor of the violation. The State should, if reasonably practicable, provide the name or names used by the illegal immigrant, the place where the illegal immigrant was providing services, and the type of services provided.~~b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

(c) Communicating with Contracting Parties to ensure maximum performance and intended results;

(d) ~~The notice should include the following information about the appeals process required under Tennessee Code Annotated Section 12-4-124(c):~~Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;

(e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and

(f) Evaluating contract results in terms of the achievement of organizational objectives.

(3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.

(a) A contract management plan should include:

1. Information about the specific staff positions and resources that will be assigned to contract management;

2. A description of the organization of identified staff and resources for the contract management responsibility; and

3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.

(b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.

(4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:

(a) Definition of needs;

(b) Procurement law, Rules, and Central Procurement Office Policy;

(c) Basic record keeping;

(d) Program specific goals, objectives, purpose, and responsibilities;

(e) Interpersonal communication;

(f) Project management skills and tools; and

(g) Evaluation techniques, skills, and tools.

(5) Each State Agency shall implement such management practices as necessary to ensure:

(a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).

~~1. The name, mailing, address, and telephone number of the person to whom the appeal must be delivered.~~
(b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

~~2. That the appeal must be in writing and must either include the contract number and the date of the notice of prohibition, or may attach a complete copy of the notice of prohibition being appealed.~~
(6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) The procuring State Agency's program area having responsibility for each contract;

(b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;

(c) The procuring State Agency's executives; and

~~3. That the contractor may request a copy of the written record on which the notice of prohibition was based.~~
(d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).

(7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

(a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.

~~4. That the request should be received by the State's designated representative within thirty (30) days of receipt of the notice of prohibition.~~
(b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: T.C.A. ~~§§ 4-5-201 et seq.; 12-4-124. : Administrative History: New rules filed January 26, 2007;~~ § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.
~~effective May 31, 2007.~~

~~0620-3-9-.03 REVIEW PROCEDURE.~~
0690-03-01-.28 Contract with Current or Former State Employee.

(1) ~~The review of the one-year prohibition required by T.C.A. 12-4-124 may be conducted by the review committee established by Tennessee Code~~

~~Annotated Section 12-4-109. The members of the review committee shall take appropriate measures to avoid conflicts of interest, including the use of designees.~~ A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.

(a) For the purposes of applying this Rule,

1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.

(2) ~~All reviews shall be conducted according to the following standards:~~ A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

~~(a) The appellant shall be allowed an opportunity to review and copy the record that led to the prohibition, including all documents in the agency's file regarding the prohibition except those protected from disclosure under federal or state law. The meeting will be scheduled to allow the appellant a reasonable opportunity to review this record and prepare the case.~~

~~(b) The appellant will have the opportunity to present information at the meeting. The review committee may limit or bar information that it considers irrelevant or duplicative.~~

~~(c) The State may present information in support of its decision.~~

~~(d) The meeting is not required to be a contested case hearing under the Tennessee Uniform Administrative Procedures Act, compiled in title 4 chapter 5 of the Tennessee Code Annotated.~~

~~(e) No formal discovery under the Tennessee Rules of Civil Procedure or the Tennessee Uniform Administrative Procedures Act shall apply to these review procedures.~~

~~(f) If the prohibition decision was based on a finding by a federal court or federal administrative agency that the appellant violated federal immigration law, the findings of fact and of law of such decision will be binding and conclusive in the appeal procedure.~~

~~(g) The results of the meeting with the review committee shall be reported in writing to the appealing party.~~

Authority: T.C.A. ~~§§ 4-5-201 et seq.; 12-4-124. Administrative History: New rules filed January 26, 2007;~~ § 4-56-102, T.C.A. § 12-4-103. ~~effective May 31, 2007.~~

~~0620-3-9-.04 APPOINTMENT OF DESIGNEE.~~

~~The Commissioner of Finance and Administration has the discretion to assign appeals under these rules to a designee instead of the review committee if he determines that the review committee may not be available to determine the appeal in a timely manner, because of scheduling issues, potential conflicts of interests, or other good cause. The designee may or may not be a Department employee but shall not have been involved previously in the decision to prohibit the contractor from state contracting. The designee shall follow the procedures set forth in regulation 0620-3-9.03 in conducting this appeal.~~

~~Authority: T.C.A. §§ 4-5-201 et seq.; 12-4-124. Administrative History: New rules filed January 26, 2007; effective May 31, 2007.~~

3

~~RULES OF THE DEPARTMENT OF GENERAL SERVICES - 0690 PURCHASING DIVISION~~

~~CHAPTER~~
~~0690 - 3 - 1~~
~~PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT AND SERVICES~~

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~~0690—3—1—.01 AUTHORITY AND SCOPE.~~

(1) ~~*Authority.* Tennessee Code Annotated established the Department of General Services and empowered it to coordinate and administer the State's purchases. This statute further created the Purchasing Division within the Department.~~These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:

~~(2) *Governing Body.* Statutes created a Board of Standards to consist of the Commissioner of General Services, the Commissioner of Finance and Administration and the Comptroller of the Treasury. The Board of Standards is charged with the responsibility to develop policy and criteria under which specifications will be established and to examine and approve the rules and regulations governing the purchasing operation of the Department and the Department's purchasing procedures for vendors and for agencies.~~

~~(3) *Scope.* The Department is charged with the centralized procurement responsibility and the exercise of procurement controls over the operating departments and agencies. The Department is empowered to contract for the purchase and/or lease of all materials, supplies, equipment, services, and utilities for the State of Tennessee except those set forth in rule 0690—3—1—.01 (7).~~

~~(4) *Procedures.* It shall be the responsibility of the Commissioner to review the Purchasing Law (Title 12, Chapter 3) and the rules, develop procedures and publish such in order to provide guidance to State departments and vendors to assist them in complying with both the law and the rules regarding the purchase of materials, supplies, equipment and services. All procedures shall be approved by the Board of Standards.~~

(a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.

(b) The University of Tennessee and the Tennessee Board of Regents college and university systems.

(c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.

(d) ~~(5) *Exempt State Agencies.* The following State agencies are exempt by law from purchasing through the Purchasing Division. All exempt agencies must adhere to the policies and procedures of the Board of Standards insofar as practicable and may purchase through the Purchasing Division. Where the Purchasing Division has established term contracts, exempt agencies are required to use such contracts unless they can obtain the product at a lesser cost~~Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with

these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.

(a) The General Assembly of the State of Tennessee

(b) The University of Tennessee

(c) The State University and Community College System

(d) The State Technical Institutes

(Rule 0690-3-1-.01, continued)

(e) (6) *Local Government Purchases.* Local government agencies are authorized by law to purchase through the Department. Requests may be made for one-time purchases or the establishment of term contracts. In addition, all items available on statewide term contracts may be purchased by local government agencies within the geographic limits of the State of Tennessee. Any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3) as amended and which contracts within the Department of Mental Health and Mental Retardation to provide services to the public, unless specifically limited by the vendor as a part of the bid, may make purchases from statewide term contracts. An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.

(7) *Exempt Commodities and Services.*

(f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.

(g) These Rules shall not apply to contracts requiring State Building Commission approval.

(h) (a) The purchase, lease, construction, management and disposal of interests in highways, bridges, public buildings, and real estate, as well as insurance policies and professional services, are exempt from purchase through the Purchasing Division, but are governed by other laws and regulations. Contracts or services which by their nature are amenable to bidding and which are subject to sufficiently uniform and impersonal criteria so that the Department may properly evaluate bids shall be procured through the Purchasing Division of the Department. These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.

(i) (b) The operation of vending machines and vending stands in State facilities is exempt from purchasingprocurement through the Purchasing DivisionCentral Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.

(j) (c) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the rulesRules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-2-1-.02-01-.01, et seq.).

(k) Notwithstanding anything in these Rules to the contrary, local government agencies are authorized to purchase through the Central Procurement Office pursuant to Central Procurement Office Policy. Requests may be made for one-time purchases or the establishment of agency term contracts. In addition, all items available on statewide contracts may be purchased by local government agencies and nonprofits.

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

(1) As used in these Rules, unless the context otherwise requires:

(a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.

(b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.

(c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

(d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.

(e) "Approval Process" means the process by which necessary State approvals are obtained.

(f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.

(g) "Base Contract" means the original written contract prior to any amendments.

(h) "Bid" means a response by a vendor to an invitation to bid.

(i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.

(j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

(k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

(l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.

(m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.

(n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.

(o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

(p) "Contract" means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

(q) ~~(d) All agencies are required to purchase items and services from other State agencies, e.g., Department of Correction, Blind Services, whenever such items or services are available therefrom and meet the desired conditions and standards.~~"Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

(r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.

(s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.

(t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.

(u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.

(v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.

(w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

~~(8) *Delegated Authority.* The Department is authorized to consider the purchasing activity of individual agencies and to delegate limited purchasing authority. Delegated purchasing authority may be limited by type of commodity or service or by dollar amount for formal or informal purchases.~~

(x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.

(y) ~~**Authority:** *T.C.A. §§4-3-1101, 4-3-1104, 4-3-1105, 12-3-102, 12-3-103, 12-3-107, 12-3-210, 12-3-401, 12-3-402, 12-3-806, 12-3-1001, 14-14-501 and 33-2-401.* **Administrative History:**~~"Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

~~*Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988*~~

(z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

(aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

(bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

(cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

~~0690 3 1 .02 DEFINITIONS.~~

1. Capacity of the donor to make the gift:

~~(a) "Commissioner" means the Commissioner of the Department of General Services. (b)~~

~~"Data" means recorded information, regardless of form or characteristic.~~

~~(c) "Department" means the Department of General Services.~~

2. Intention of the donor to make the gift:

~~(d) "Departmental Computer System" is a computer system, including hardware and software, operated by, controlled by, and located in one department of the State to handle that department's unique data processing applications. A departmental computer system is an individualized, specialized system dedicated to one department.~~

3. Completed delivery of the gift to or for the State, and

4. Acceptance of the gift by the State.

~~(Rule 0690 3 1 .02, continued)~~Nothing in this Rule shall be construed to mean that the State must accept any gift.

(dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.

(ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

(ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

(gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.

(hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.

(ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.

(jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

(kk) ~~(e)~~ "Invitation to Bid" ~~means all documents, whether attached or incorporated by reference, utilized for soliciting bids~~" means a procurement method where a contract is awarded to one or more bidders.

(ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.

(mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

(nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.

(oo) ~~(f) "Multi-Step Sealed Bidding" is a two phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.~~ Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.

(pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

(qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.

(rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

(ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.

(tt) ~~(g)~~ "~~Requisitioning~~Procuring Agency~~"~~" means ~~any department, institution, or agency of the State or political entity in~~the departments, agencies, and entities of the State of Tennessee ~~that~~which make requisitions ~~the purchase of materials, supplies, equipment and services through the Department~~for or procure goods or services.

(uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.

(vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

(ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.

(xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.

(yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.

(zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

(aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

(ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.

(ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.

(eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.

(fff) "Response" means a written response to a solicitation for goods or services.

(ggg) ~~(h)~~ "Responsible ~~Bidder~~"Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability ~~which~~that will assure good faith performance.

(hhh) ~~(i)~~ "Responsive ~~Bidder~~"Proposer" means a person who has submitted a ~~bid~~proposal, which conforms in all material respects, to the ~~invitation to bid~~terms of a solicitation.

(iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

(jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

(kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.

(lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

(mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.

(nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.

(ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

(ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

(qqq) ~~(j)~~ "Specification"" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. ~~A specification~~"Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(rrr) ~~(k)~~ "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

(sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.

(ttt) "State Architect" means the person, who oversees the Office of the State Architect.

(uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

(vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.

(www) "Term Contract"" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon ~~unit~~ price~~(s)~~ or prices.

(xxx) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Authority: T.C.A. §~~12 3 201. Administrative History: Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.~~ 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690~~ 3 1 .03 METHODS OF PURCHASING.~~-03-01-.03 Central Procurement Office.

(1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.

(2) The duties and responsibilities of the Central Procurement Office shall include:

(a) Implementing these Rules;

(b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;

(c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

(d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;

(e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;

(f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;

(g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;

(h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;

(i) Resolving protests of Aggrieved Respondents;

(j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and

(k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

(1) A Delegated Authority to procure goods or services, award grants, issue loans or enter into revenue or no cost contracts shall be effective upon the approval of the Chief Procurement Officer and the Comptroller of the Treasury. No grant, loan, purchase, or contract shall be initiated and no obligation shall be incurred on behalf of the State by a State Agency unless a Delegated Authority is granted by the Chief Procurement Officer and the Comptroller of the Treasury. The approval process requirements for a Delegated Authority shall be more particularly prescribed by Central Procurement Office Policy. The general requirements for each Delegated Authority are as follows:

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

(i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.

(ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

1. Delegated Loan Authority: A Delegated Loan Authority shall set forth the terms and conditions for making a loan and include all provisions required by Central Procurement Office Policy.

2. Delegated Purchase Authority:

(i) A Delegated Purchase Authority may be approved for procurement of goods or services, provided that such purchases and any resulting contracts from such purchases are subject to applicable provisions of these Rules and Central Procurement Office Policy.

(b) A Delegated Purchase Authority for the procurement of goods or services shall set forth all criteria, provisions and limitations consistent with Central Procurement Office Policy.

(2) General Requirements of Delegated Authorities:

(a) Each State Agency receiving a Delegated Authority shall file such documentation with the Chief Procurement Officer, in a form prescribed by Central Procurement Office Policy, which details the request for a Delegated Authority and the authorized signatories for the State Agency.

(b) All Delegated Authorities shall set forth all requirements prescribed by Central Procurement Office Policy.

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

(d) Records of the approval of the delegated authority shall be maintained by the Central Procurement Office

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.

(iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP

or its revisions shall be approved by the Central Procurement Office based on the following:

(I) Application of the requirements of these Rules and Central Procurement Office Policy;

(II) Adequacy of the scope description; and

(III) Adequacy of the RFP's assurance of:

I. Fairness to respondents;

II. Clear, fair and open competition;

III. Achievement of procurement objectives; and

IV. Protection of the State's interests.

(iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.

(v) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.

(vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.

(I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.

(II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.

(III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.

(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.

(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) ~~(1) *Competitive Sealed Bid.* With the following exceptions, the Purchasing Division shall mail invitations to bid requesting sealed bids for purchases exceeding $5,000.00~~Invitation to Bid.

~~(a) Emergency Purchases. The requirements for a sealed bid may be waived in an emergency purchase situation by the Commissioner.~~

(a) ~~(b) Board of Standards' Approval. Sealed bids are not required for amounts not exceeding $10,000.00 if approved by the Board of Standards.~~The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) ~~(2)~~ Informal Written, Verbal or Telephone Quotations. ~~When sealed bids are not required, unsealed bids~~

(a) Informal procurement methods through use of written, verbal or telephone quotations ~~may be requested. The bids or a~~for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the ~~bid~~procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) ~~(3) *Single*~~ Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source ~~*Purchase Contract.* Single-source purchases shall be made only~~Procurement.

(a) Whenever practicable, procurements should be competitive. Sole source procurements may be made when an item ~~is unique and~~or service possesses specific characteristics that can only be filled by ~~only one source and must have prior approval~~

~~(Rule 0690-3-1-.03, continued)by the Commissioner. The Purchasing Division in making this determination shall consider factors such as the following:~~a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. All sole source procurements, regardless of the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

1. ~~whether~~Whether the vendor possesses exclusive ~~and~~/or predominant capabilities or the item or service contains ~~a patented feature~~features providing a superior utility not obtainable from similar ~~products~~vendors;

2. ~~whether~~Whether the product or service is unique and ~~easily established as one of a kind~~available from only one source;

3. ~~whether~~Whether the program requirements can be modified so that ~~competitive products~~competitively procured goods or services may be used;

~~4.~~ ~~whether the product is available from only one source and not merchandised through wholesalers, jobbers or retailers;~~

4. ~~5. whether~~Whether items must be interchangeable or compatible with in-place items~~.~~;

~~After review of the written justification from the requisitioning agency and ascertaining that the item to be purchased meets one or several of the above criteria, the single-source purchase may be made without following competitive bid procedures. A written quote is obtained from the single-source supplier, and a purchase order is issued without resorting to competitive bidding.~~

~~(4) *Multi-Step Sealed Bidding.*~~

~~(a) Utilization. The use of a multi-step sealed bidding process is required in the acquisition of departmental computer systems involving the purchase of hardware and the development of application software. The multi-step sealed bidding process may also be used, subject to approval by the Board of Standards, for the procurement of other products or services, when it is not practical to prepare initially definitive specifications which will be suitable to permit an award based on price.~~

~~(b) Process.~~

~~1.~~ ~~In the invitation to bid, the Purchasing Division shall provide the bidder with information describing the functional requirements of the system, purpose of the procurement, technical requirements, bidder qualifications, and any other information considered relevant to the goods or services being acquired.~~

~~2.~~ ~~The bidder shall submit a technical offer sufficient in detail so as to constitute the technical specifications of the purchase.~~

5. ~~3. As specified in the invitation to bid, all technical offers must be received by the State at the designated time and will be opened in the same manner as a competitive sealed bid. Technical offers shall not be made public until the inspection period following evaluation of the bids submitted with prices.~~Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or

~~4.~~ ~~The technical offers shall be evaluated and deemed acceptable, potentially acceptable, or unacceptable by a technical Evaluation Team consisting of representatives of the user agency and the Department, along with others as determined by the procedures of the Department.~~

~~(Rule 0690-3-1-.03, continued)~~

~~5.~~ ~~Bid Price. At the time of the submission of the technical offer or at the conclusion of the evaluation phase of the multi-step sealed bidding process, bidders will be required to submit a bid price clearly defining the cost of their technical offer in accordance with the invitation to bid. The price bids shall not be opened until after evaluation of the technical bids.~~

6. ~~Award. Each contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid.~~Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

Proprietary Procurement.

(a) ~~(5)~~ Proprietary ~~*Purchase Contract.* A proprietary product is one~~procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture ~~and sell the product. Marketing is generally controlled by franchises that may include competitive sales at wholesale or retail levels. When it is found that bids may be obtained from different franchises, a formal bid invitation is issued. Requests for all proprietary purchases require written justification from the requisitioning agency and prior approval by the Commissioner~~or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy.

Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

~~(6)~~ ~~*Term Contract.* The Purchasing Division may establish a term contract for an individual agency for specific goods or services or a statewide term contract which all State agencies must utilize and which may be used by local governments. Every invitation to bid for a term contract must state the total estimated purchase requirements for the current contract period, if applicable, and for the new contract period. A term contract for more than a period of 12 months (maximum of 60 months) must provide that the State may cancel at any time with no more than one (1) year's notice and at the end of any fiscal year in the event funds are not available. The requirement of a multi-year contract shall be stated in the invitation to bid, and any multi-year contract shall be awarded pursuant to these rules and shall not be for a period longer than 60 months. There shall be no pricing agreement other than in a contract between a vendor(s) and the State.~~

~~(7)~~ ~~*Utility Contracts.* The Department shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority in such manner as the Commissioner deems to be in the best interest of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, whenever possible, in accordance with these rules and regulations, unless it has been determined that such purchase is single source. If such purchase had been determined to be single source, the purchase shall then be made pursuant to rule 0690—3—1—.03 (3) which governs sole source procurements.~~

~~**Authority:** *T.C.A. §§12—3—107(1), 12—3—202, 12—3—203, 12—3—204, 12—3—205, 12—3—206 and 12—3—502.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988. Amendment filed July 29, 1998; effective November 28, 1998.*~~

~~**0690—3—1—.04 QUALIFICATION OF BIDDERS.**~~

~~In order to be awarded a contract for goods or services, a vendor must be registered with the Purchasing Division of the Department by submitting a vendor's application form for approval pursuant to the Purchasing procedures. A vendor may be removed from a list of eligible vendors for failure to follow the published procedures and requirements. The Purchasing Division shall utilize a Commodity Classification Code to classify and list all vendors.~~

~~**Authority:** *T.C.A. §§12—3—107, 12—3—701, 12—3—702 and 12—3—703.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~

~~**0690—3—1—.05 COMPETITIVE NEGOTIATION.**~~

(8) ~~(1)~~ Competitive Negotiation.

(a) A contract may be ~~entered into~~procured by competitive negotiation ~~only in cases when the State is unable to obtain~~when the needed goods ~~and~~/or services cannot be procured by competitive sealed bid. ~~The Commissioner shall prescribe the procedures under which negotiation is to be conducted. These procedures shall provide for the safeguarding of the information and provide fairness to the vendors in the negotiation process.In the event it appears that the~~All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation ~~process is to be implemented, such an action must be approved by the Commissioner.~~as a method of

procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the ~~Commissioner, and he shall approve the results~~Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.~~ All such negotiated contracts shall be reported by the Commissioner to the Board of Standards.~~

(9) ~~(2)~~ Direct Negotiation ~~*GSA*.~~ General Services Administration.

(a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the ~~Commissioner may~~Chief Procurement Officer may directly negotiate with that vendor~~, but there~~. The price shall not be ~~no contract price that is~~ higher than that contained in the contract ~~price~~ between the General Services Administration and the vendor affected. ~~Any purchase made pursuant to this provision must have the prior approval of the Board of Standards.~~

(10) Utility Contracts.

(a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

~~**Authority:** *T.C.A. §§12 - 3 - 107, 12 - 3 - 207 and 12 - 3 - 208.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690~~ - 3 - 1 - .06 PREPARATION OF INVITATIONS TO BID, SPECIFICATIONS, REQUISITIONS AND REPORTS.~~

~~(1)~~ ~~*Invitation to Bid*~~-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written ~~invitation to bid~~solicitation shall contain the following elements at a minimum:

(a) The description of the technical requirements for the goods or scope of services to be procured;

(b) ~~(a) terms~~Terms and conditions that clearly ~~stating~~state the requirements for ~~the bid~~ response and language to bind the parties in the event of award;

(c) ~~(b) clear and definitive specifications which shall, whenever possible, permit open and competitive bidding~~Clear and definitive technical requirements and scope that allow for open competition where practicable;

(d) The solicitation shall contain directions regarding the submittal of proposals;

(e) (c) instructionsInstructions for packaging, shipping, and delivering the commoditycommodities purchased, and, where appropriate, instructions for storage by the vendor, where applicable or appropriate; and

(f) (d) anyAny requirements for bid and/orproposal, performance or payment bonds.;

(g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;

(h) A declaration of whether the contract award is subject to successful contract negotiation;

(i) (2) *Specifications.* The State shall use open specifications and procedures which promote competitive bidding. Vendors are required to notify the Purchasing Division whenever specifications are not open and/or procedures are not desirable. All suggestions or objections shall be made in writing and received by the Purchasing Division at least three (3) working days prior to the bid opening.A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and

(3) *Requisitions.* The Purchasing Division shall process all requisitions submitted to it by other agencies or departments pursuant to the purchasing guidelines and procedures as published. Each requisition should be submitted to the Purchasing Division at least sixty (60) days prior to the requested delivery date for the goods.

(j) (4) *Reports.* When requested by the Department, an agency or department shall provide information and statistics to support or clarify estimates for purchases and to verify use of goods or materials within that agency or department. Such reports may be established on a periodic basis when deemed necessary by the Department.An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(Rule 0690-3-1-.06, continued)

Authority: *T.C.A. §§12-3-107, 12-3-211 and 12-3-502.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*

0690-3-1-.07 BIDS AND PURCHASING RECORDS.

(1) *Inspection of Purchasing Records.* All records of the Purchasing Division and the Board of Standards shall be available to the public during the regular State office hours. Any inspection of records shall not interfere with the operation of the Department. Where protected by the Public Records statutes, a vendor's financial information disclosed in his bidder's qualification form shall not be disclosed to the public.

(2) Inspection of Solicitation File.

(a) (2) *Inspection of Bids.* Each invitation to bidEach solicitation shall contain a schedule indicating the dates and times for bidsolicitation opening and evaluation. Interested bidders must contact the Purchasing Agent listed on the invitation to bid by the date and time stated to schedule an appointment to inspect the bid file prior to award. Upon request, the timeline for evaluation and the anticipated Award date. Once the state issues the Notice of Intent to

Award, the Open File Period begins. The solicitation file shall be open for public inspection for seven (7) calendar days upon request. The Central Procurement Office or a Delegated State Agency shall give the requestor a reasonable opportunity to inspect the ~~bid file, as set forth in the invitation to bid, will be provided to the bidder. If there is no request to inspect the bid file by the date and time indicated, the Purchasing Agent~~solicitation file. If there is no protest of the Notice of Intent to Award, the State will proceed with the contract award.

(3) Cancellation of Solicitation or Rejection of Responses.

(a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(b) The Chief Procurement Officer shall have the discretion to reject any and all responses.

1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

1. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.

2. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:

(i) Unreasonably high prices or failure of all responses to meet technical specifications;

(ii) Error or defect in the solicitation;

(iii) Cessation of need;

(iv) Unavailability of funds;

(v) Lack of adequate competition; or

(vi) ~~(3) *Amendment or Withdrawal of Bids.* A vendor may withdraw or amend a bid in writing prior to its opening. After bid opening, a vendor may withdraw a bid or a portion thereof only upon a written determination by the Commissioner that there is an obvious error in the bid supported by appropriate vendor cost information and where the enforcement of the bid would impose an unconscionable hardship on the vendor. If no error is made in a bid, but the enforcement of the bid would impose an unconscionable hardship on the vendor, the Commissioner, with the approval of the Board of Standards, may allow the vendor to withdraw its bid.~~A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

~~**Authority:** *T.C.A. §§10-7-504, 10-7-506, 12-3-107, 12-3-203 and 12-3-213.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~

~~**0690-3-1-.08**~~
~~**AWARD.**~~

~~(1)~~ ~~*Criteria for Award.* Each contract shall be awarded by the Commissioner by prompt written notice to the lowest responsible and responsive bidder pursuant to either an invitation to bid or an informal quotation request as set forth in rule 0690 - 3 - 1 - .03(2). Each bid must be signed in ink by the vendor's authorized agent.~~

~~Where more than one item is specified in the invitation to bid, the State shall provide in the invitation to bid that it has the right to determine the low vendor(s) either on the basis of each individual item, a group of items or total of all items.~~

~~(2)~~ ~~*Contractual Agreement.*~~

~~(a)~~ ~~The delivery of a State of Tennessee purchase order or a notice of contract award (for term contracts) with the valid signature of a contracting officer of the Purchasing Division constitutes acceptance of the offer to sell and consummates the binding contractual agreement.~~

~~(b)~~ ~~Only the Commissioner is authorized to bind the State in contractual agreements. Contracts signed by other State personnel are null and void and do not obligate the State to payment for goods and/or services unless contracted for under authorization of Delegated Purchase Authority or Emergency Purchases.~~

~~(Rule 0690-3-1-.08, continued)~~

~~(3)~~ ~~*Evaluation of Technical Offers and Bids.* Technical offers and bids shall be evaluated in accordance with the invitation to bid. Evaluation criteria that will affect the bid price shall be objectively measurable (quantifiable).~~

~~(4)~~ ~~*Time Frame for Award.* Each invitation to bid shall establish a time schedule for the public bid opening, evaluation, and inspection of the bid files.~~

~~(5)~~ ~~*Tie Bids.* A tie bid exists where two or more vendors offer products that meet all specifications, terms and conditions at identical prices, including cash discount offered for prompt payment. In such case, a tie bid will be broken by the following methods, in descending order:~~

3. Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.

~~(a)~~ ~~in-state business; (b)~~

~~small business;~~

~~(c)~~ ~~award item(s) to vendor who was low vendor on other item(s) being bid per the same requisition; (d)~~

~~best delivery;~~

~~(e)~~ ~~by lot or coin toss.~~

4. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: T.C.A. ~~*§§12 - 3 - 105, 12 - 3 - 107, 12 - 3 - 203, and 12 - 3 - 206.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986.*~~

~~*Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~§ 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690~~-3-1-.09 BONDS.~~-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

(a) ~~(1) *Bid Bond.* A bid~~The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business ~~by~~in the State of Tennessee ~~may be required at the discretion of the Commissioner. When required, the amount of the bid bond.~~ All proposal bond amounts shall be stated as a set amount or as a percentage of the ~~Department's estimated value of the~~ contract ~~in response to the invitation to bid.~~value. In no event ~~may~~shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. ~~Bid~~Proposal bonds submitted by unsuccessful ~~vendors will~~respondents shall be returned upon ~~award of~~ contract award. Personal checks ~~are~~shall not ~~acceptable in the place of bid bonds. However, bank cashier's checks will be accepted~~be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond. ~~A~~

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee ~~may be required, at the discretion of the Commissioner, in the invitation to bid. When required, the amount of the~~. All performance bond amounts shall be stated as a set amount or as a percentage of the contract ~~price (but may not exceed 100 percent of the total contract price)~~value, and the amount may be reduced proportionately as performance under the contract successfully moves forward ~~successfully~~. Performance bonds must be filed with the State of Tennessee within ~~ten~~fourteen (~~10~~14) ~~working~~calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks ~~are~~shall not ~~acceptable~~be accepted in the place of performance bonds. ~~However, bank cashier's checks will be accepted. An~~ Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit, ~~which shall be held by the Purchasing Division,~~ or cashier's check from a ~~State~~state or national bank or a ~~State~~state or federal savings and loan association ~~having its principal office in Tennessee may be accepted by the Purchasing Division in lieu of a performance bond, subject to approval of the~~or other financial institution having a physical presence in Tennessee. The terms and conditions of ~~said~~all irrevocable ~~letter of credit or certificate of deposit~~letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. §~~*12-3-203.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987;*~~. 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

(1) To ensure a transparent, consistent and equitable process in accordance with Central Procurement Office Policy, the Chief Procurement Officer may conduct communications as he or she determines to be in the best interests of the State, provided that any communication, clarification, or negotiation that may take place regarding any procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more respondents an unfair advantage or unfairly enable one or more respondents to improve their responses as a result and documented in the procurement file to support the final determination based on the information requested.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process–Determining Non-Responsiveness.

(1) If the Central Procurement Office determines that a respondent has provided, for consideration in a contractor selection process or in negotiations, information that does not meet the technical requirements of the solicitation, where the respondent knew or should have known the submitted information was materially defective due to the omission of information or the submission of incorrect information, the subject response may be determined nonresponsive and rejected as prescribed in Central Procurement Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.
~~*effective February 28, 1988.*~~

(1) A respondent may withdraw or amend a response in writing prior to its opening. After responses are opened, a respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the respondent or as prescribed in Central Procurement Office Policy. Any decision to allow withdrawal or amendment of a response shall be documented in the solicitation file.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

(1) Each contract shall be awarded by the Chief Procurement Officer on behalf of the Central Procurement Office or by a Delegated State Agency where authority has been delegated in accordance with these Rules and Central Procurement Office Policy. Notice of Intent to Award shall be communicated in writing or electronic transmission to all respondents. The Chief Procurement Officer is authorized to award a contract if doing so is in the best interests of the State.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation

shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.

1. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

2. The Chief Procurement Officer may consider the following grounds for protest and no others:

(i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

3. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

4. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

5. A written protest that is filed with the Protest Committee shall:

(i) Meet the requirements of T.C.A. § 4-56-103;

(ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,

(iii) Raise only grounds that were raised before the Chief Procurement Officer.

6. ~~0690-3-1-.10 AUTHORIZATION FOR SHIPMENT, DELIVERY, RECEIPT, INSPECTION AND STORAGE.~~ All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

7. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

(i) The final determination letter of a protest before the Chief Procurement Officer shall be reported to the Protest Committee and the Comptroller of the Treasury.

(ii) The final determination letter of a protest before the Protest Committee shall be reported to the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

(1) In accordance with Central Procurement Office Policy, communication and negotiation shall be conducted in a manner that is in the best interests of the State, provided that any communication, clarification, or negotiation so conducted does not undermine the procurement process as set forth in the solicitation, these Rules or Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

(a) Agency Term Contract - State Agencies may establish term contracts for specific goods or services. The resulting contract shall contain a maximum liability dollar amount that represents the estimated dollar volume as prescribed in the solicitation.

(b) Statewide Term Contract - The Central Procurement Office may establish statewide term contracts that all State Agencies must utilize and that may be used by local governments and higher education.

(2) Term Contract-General.

(a) A term contract for more than a period of twelve (12) months may provide that the State has the right to cancel at any time for convenience by providing written notice to the Contracting Party.

(b) All term contracts shall contain a provision that provides for the termination of the contract at the end of any fiscal year in the event funds are not available.

(c) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Central Procurement Office. A report of all contracts awarded for a period longer than sixty (60) months in such format and at such interval determined requested shall be provided to the Comptroller of the Treasury.

(d) There shall be no pricing agreement other than in a contract between the State and a Contracting Party.

(3) No Cost Contracts

(a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.

(b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

(a) A "Revenue Contract" is a written contract where a State Agency provides specific deliverable services for monetary compensation. Prior to proceeding with any Revenue Contract negotiation, the State Agency must obtain the prior approval of the Chief Procurement Officer. If the request to enter into a Revenue Contract is approved, the State Agency shall proceed to procure the Revenue Contract in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

(b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization, or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;

2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or

3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

2. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

(6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

(1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:

(a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.

(b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

(c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.

(d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.

(f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

(g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

(h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

(1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.

(2) Necessary Contract Clauses for All Contract Types.

(a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

(b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

(d) Non- Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other

protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

(e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.

(f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.

(g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.

(h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.

(i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.

(j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

(k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

(l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

(m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

(n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.

(o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

(q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

(r) Annual Report and Audit. All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(s) Monitoring. All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(t) Debarment and Suspension.

1. All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provision shall act as a certification that the contracting party:

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

(iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

(iii) The conditions in the market place that justify modification of the necessary contract clause; and

(iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

0690-03-01-.18 Approval Process of Contracts and Amendments.

(1) All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.

(2) The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or

4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or

2. Provisions permitting the procurement of services from an individual.

(e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-.19 General Requirements of Contract Amendments.

(1) A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:

(a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.

(b) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.

(c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.

(d) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

(1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:

(a) The goods or services are in fact needed;

(b) The goods or services cannot be satisfactorily or efficiently provided by the State;

(c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and

(d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

In order to be awarded a contract for goods or services, a vendor must submit appropriate paperwork to Finance and Administration, Division of Accounts, to receive payment.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

(1) Each ~~invitation to bid~~solicitation and each contract shall clearly state instructions for ~~packaging, shipping, delivery, and, where appropriate, instructions for storage by the vendor~~authorizing services or delivery of goods.

(2) ~~(1) *Purchase Orders Required.* Except where exempted in the procedures for vendors, any vendor~~Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order ~~or written notice of award or~~and who delivers a product or service not specifically authorized by ~~the~~a contract or purchase order does so at ~~its~~his or her own risk.

~~(2) *New Equipment.* All material, supplies and equipment offered and furnished must be new unless the invitation to bid specifically permits offers of used or reconditioned items.~~

(3) ~~*Substitutions.* A vendor may manufacture or ship an item that materially conforms to or exceeds the specifications, but which may be technically different from the item bid. Substitutions shall require the approval of the Purchasing Division prior to shipment.~~

~~(4) *Shipping.*~~

~~(a) All packaging shall conform to the current standards acceptable to the trade and required by Interstate Commerce Commission Regulations.~~

~~(b) F.O.B. points shall be established for each individual purchase. When the F.O.B. is the shipping point, the contractor may prepay the freight charges and add the amount to the invoice when allowed in the invitation to bid. A copy of the freight bill must be attached to each invoice that includes freight charges. Delivery by a contractor to a common carrier does not constitute delivery to State agencies or its political subdivisions.~~

~~(c) The number of calendar days required for delivery after receipt of order shall be stated in the invitation or the bid, and when no time is stated in either document, the time shall be two weeks.~~A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or

Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

(4) ~~(5) *Inspection and Testing.*~~ All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications ~~will~~may be rejected in the sole discretion of the Chief Procurement Officer or the Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the ~~merchandise has~~goods have been consumed.

(5) ~~(6)~~ Cancellation of ~~*Purchase Orders.* No cancellation of State of Tennessee purchase orders and departmental purchase orders may be made except in writing by the Purchasing Division. Orders may be cancelled without the consent of the contractor in case of any~~State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default ~~by the contractor~~. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of ~~nature or~~God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

(1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

(2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

The Central Procurement Office shall be responsible for the management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts procured by the Central Procurement Office on behalf of the State Agency or within their delegated authority.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

If a State Agency determines it to be in the best interests of the State to terminate a contract before the contract end date, either for cause or convenience, the head of the State Agency shall request and obtain the approval of the Chief Procurement Officer prior to any notice of contract termination.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

(1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

(2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

(a) Allocating adequate staff and resources to contract management;

(b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

(c) Communicating with Contracting Parties to ensure maximum performance and intended results;

(d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;

(e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and

(f) Evaluating contract results in terms of the achievement of organizational objectives.

(3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.

(a) A contract management plan should include:

1. Information about the specific staff positions and resources that will be assigned to contract management;

2. A description of the organization of identified staff and resources for the contract management responsibility; and

3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.

(b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.

(4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:

(a) Definition of needs;

(b) Procurement law, Rules, and Central Procurement Office Policy;

(c) Basic record keeping;

(d) Program specific goals, objectives, purpose, and responsibilities;

(e) Interpersonal communication;

(f) Project management skills and tools; and

(g) Evaluation techniques, skills, and tools.

(5) Each State Agency shall implement such management practices as necessary to ensure:

(a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).

(b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

(6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) The procuring State Agency's program area having responsibility for each contract;

(b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;

(c) The procuring State Agency's executives; and

(d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).

(7) ~~*Agency Storage and Distribution.* It shall be the responsibility of each agency head to have an efficient and effective storage and distribution system for supplies, materials and equipment. The system should include controls to safeguard the supplies, materials and equipment from physical deterioration, loss and theft, and to maintain the optimum quantity on hand to prevent over- and understocking.~~ Subrecipient monitoring is

required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

(a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.

(b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: ~~*T.C.A. §§4 - 3 - 1105, 12 - 3 - 107 and 12 - 3 - 212.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~

T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690 ~~3 - 1 - .11 PURCHASES FROM SMALL BUSINESSES.~~ 03-01-.28 Contract with Current or Former State Employee.

(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.

(a) For the purposes of applying this Rule,

1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.

(2) ~~In conjunction with the Department of Finance and Administration, the Commissioner shall design and implement procedures to identify small businesses and to monitor purchases from those businesses. The Commissioner shall also develop criteria to be used to determine a business's eligibility to be considered in the State's active solicitation of bids from small business, such criteria to include, but not be limited to, number of employees and annual gross sales.~~ A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college).

Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

(a) ~~Number of Employees. Utilizing the Bureau of Census Publication, County Business Patterns, the Department shall determine the total number of employees in each commodity code industry and select the employee size category comprising a set percentage (as determined annually by the Board of Standards) of total business enterprises in a particular industry.~~

(b) ~~Annual Gross Sales. Utilizing the Bureau of Census Publication and related business patterns, the Department shall determine the volume of sales for each commodity code type classification and select the volume of gross sales which will qualify as the maximum limit for a small business (as determined annually by the Board of Standards) of the total business enterprises in a particular industry.~~

~~**Authority:** *T.C.A. §§12-3-803, 12-3-804 and 12-3-807.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~

~~**0690-3-1-.12 RESOLUTION OF PROTESTS BY THE COMMISSIONER.**~~

(1) ~~Upon submission of a protest by a vendor involving a bid, the bid process, a pending award or any other matter involving a vendor, the Commissioner shall, within 15 days of receipt do one of the following:~~

(a) ~~Reject the protest, or~~

(b) ~~Accept the protest and meet the terms of the vendor, or~~

(c) ~~Request additional information or request the vendor to present data to the Commissioner in-person at the Commissioner's offices.~~

1. ~~All requests for information shall be in writing.~~

2. ~~The vendor shall respond to requests within 15 days of receipt.~~

3. ~~If an in-person presentation is required, a mutually agreed upon time and date shall be set by the Commissioner. Such a meeting shall be within 10 days after notification to the vendor of such a meeting unless the Commissioner determines that it is in the best interests of the State to extend the time frame.~~

4. ~~After the Commissioner has received the requested information and/or held an in-person presentation, the Commissioner may extend the time frame and/or request additional information or hold additional in-person presentations.~~

(2) ~~The Commissioner shall have no longer than 60 days from receipt of a protest to resolve a protest. The final determination of the Commissioner shall be given in writing and submitted to the protestor and to the Board of Standards.~~

(3) ~~In the event that the Commissioner fails to respond to a protest within 15 days of receipt of a protest or fails to resolve the protest within 60 days, the vendor shall have the right to request that the Board of Standards consider the protest.~~

~~(Rule 0690-3-1-.12, continued)~~

~~(4) Failure of a vendor to meet the time requirements as stipulated shall result in the rejection of the protest. (5) All protests, supporting documentation and the resolution or decisions thereof, shall be filed and maintained by the Purchasing Division in accordance with the Public Records statutes regarding retention.~~

~~**Authority:** *T.C.A. §§12-3-107 and 12-3-214.* **Administrative History:** *Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~

~~**0690-3-1-.13 AMENDING OR REPEALING RULES AND REGULATIONS.**~~

~~All rules of the Purchasing Division of the Department may be amended or repealed subject to the approval of the Board of Standards and to the publication rules and procedures of the Secretary of State. All purchasing procedures may be amended or repealed subject to the approval of the Board of Standards.~~

Authority: ~~*T.C.A. §12-3-107. **Administrative History:** Original rule filed February 5, 1982; effective June 1, 1982. Amendment filed January 24, 1986; effective April 15, 1986. Repeal and new rule filed November 25, 1987; effective February 28, 1988.*~~ T.C.A. § 4-56-102. T.C.A. § 12-4-103.

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Chapter 0690-03-02

Purchase of Materials, Supplies, Equipment and Services Limitations of Liability

Repeal

Rule 0690-~~3~~03-~~2~~02-.01 Policy Statement and Scope of Rules ~~0690-3~~ is repealed in its entirety.

Authority: Authority: T.C.A. § 4-56-104

Rule 0690-03-~~2~~02-.02 Approval for Limitation of Liability is repealed in its entirety.

~~0690-3-2-.01 POLICY STATEMENT AND SCOPE OF RULES.~~

~~(1)~~ ~~The General Assembly of Tennessee, in T.C.A. § 12-3-315, authorized the Department of General Services to promulgate rules setting forth the circumstances when, and the procedures under which, the State would purchase materials, supplies, equipment and services while accepting limitations of the liability of contractors for damage claims.~~ Authority: Authority: T.C.A. § 4-56-104

Chapter 0690-03
Comprehensive Rules and Regulations of the Central Procurement Office
Repeal /New
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Rule 0690-03-01-.01 through Rule 0690-03-01-.13 is repealed by deleting the rules in their entirety and by replacing the following language, so that, the New Rule 0690-03-01-.01 through 0690-03-01-.28 shall read as follows:

0690-03-01 Comprehensive Rules and Regulations of the Central Procurement Office

0690-03-01.01 Applicability.

(1) These Rules shall apply to all procurements and resulting contracts for commodities and services entered into by the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee (referenced herein as "agency"), with the following exceptions:

(a) Contracts of the Department of Transportation for construction and engineering which are made in accordance with the provisions of T.C.A. §§ 54-5-101, et seq.

(b) The University of Tennessee and the Tennessee Board of Regents college and university systems.

(c) Contracts to employ additional legal counsel for the State of Tennessee that are subject to the provisions of T.C.A. § 8-6-106 shall not be subject to these Rules. Contracts for the provision of legal services, consultation, or advice provided to beneficiaries of programs of the State of Tennessee and not directly provided to the State of Tennessee shall be made in accordance with these Rules.

(d) Interagency Agreements between two agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued, shall not be subject to these Rules. A contract between a State Agency subject to these Rules and a separate governmental entity with the legal capacity to contract and sue or be sued shall be reduced to writing, contain an adequate description of the duties of each party, a statement of the contract term, a statement of the maximum amount payable, and shall be drafted to comply with these Rules and Central Procurement Office Policy, unless otherwise provided by applicable law.

(e) An agreement with the federal government providing for a grant award from the federal government to the State (e.g., to operations, program activities, or to pass through a grant award that specifically identifies a subrecipient) shall not be subject to these Rules. Notwithstanding the foregoing, the State's contracts with subrecipients or vendors paid with State or federal funding shall be subject to these Rules.

(f) Contracts conveying gifts to the State are not subject to these Rules, even though acceptance of a gift may necessitate an agreement between the donor and the recipient State Agency regarding the gift.

(g) These Rules shall not apply to contracts requiring State Building Commission approval.

(h) These Rules shall not apply to the purchase, lease, or disposal of any real estate owned by or acquired by the State.

(i) The operation of vending machines and vending stands in State facilities is exempt from procurement through the Central Procurement Office in instances where the Blind Services Division of the Department of Human Services prefers to operate the facilities.

(j) The procurement of surplus property by the State through State Agencies or otherwise is not subject to these Rules. Agencies desiring to acquire surplus State property must follow the Rules and regulations of the Department of General Services, State Personal Property Utilization Division (Rules 0690-02-01-.01, et seq.).

(k) Notwithstanding anything in these Rules to the contrary, local government agencies are authorized to purchase through the Central Procurement Office pursuant to Central Procurement Office Policy. Requests may be made for one-time purchases or the establishment of agency

term contracts. In addition, all items available on statewide contracts may be purchased by local government agencies and nonprofits.

Authority: T.C.A. § 4-56-102, § 4-56-105, T.C.A. § 12-3-101, T.C.A. § 12-3-102, T.C.A. § 12-3-103, T.C.A. § 12-4-101, T.C.A. § 12-3-1201, T.C.A. § 71-4-503.

0690-03-01-.02 Definitions.

(1) As used in these Rules, unless the context otherwise requires:

(a) "Advisory Council" means the council created and empowered by T.C.A. § 4-56-106.

(b) "Agency" means each State board, commission, committee, department, officer, or any other unit of State government.

(c) "Agency Term Contract" means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices.

(d) "Aggrieved Respondent" means a respondent, who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.

(e) "Approval Process" means the process by which necessary State approvals are obtained.

(f) "Award" means a State Agency's notice to a proposer of the acceptance of a proposal.

(g) "Base Contract" means the original written contract prior to any amendments.

(h) "Bid" means a response by a vendor to an invitation to bid.

(i) "Bidding" means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.

(j) "Bonus" means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

(k) "Calendar Day" means all days in a month, including weekends and holidays. In the event a final calendar day falls on a weekend, holiday or other day where State offices are closed, the next business day becomes the final calendar day.

(l) "Central Procurement Office" means the State office established and empowered by T.C.A. § 4-56-104.

(m) "Central Procurement Office Policy" means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.

(n) "Chief Procurement Officer" means the official as defined by T.C.A. § 4-56-104.

(o) "Competitive Sealed Proposal" means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a solicitation.

(p) "Contract" means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.

(q) "Contract Amendment" means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.

(r) "Contract Approval" means the procedures a State Agency must follow to obtain final approval of a contract.

(s) "Contracting Party" means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.

(t) "Cost-reimbursement Grant" means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.

(u) "Delegated Authority" means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the State.

(v) "Delegated Grant Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.

(w) "Delegated Loan Authority" means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program. "Delegated Purchase Authority" means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.

(x) "Delegated State Agency" means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.

(y) "Department of General Services" means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.

(z) "Emergency Purchases" means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.

(aa) "Endowment Grant" means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

(bb) "Fully Executed" means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

(cc) "Gift means a voluntary transfer of goods or services to the State made gratuitously and without consideration. Essential requisites of a gift are:

1. Capacity of the donor to make the gift;

2. Intention of the donor to make the gift;

3. Completed delivery of the gift to or for the State, and

4. Acceptance of the gift by the State.

Nothing in this Rule shall be construed to mean that the State must accept any gift.

(dd) "Goods" means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance. The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.

(ee) "Grant" means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

(ff) "Grant Budget" means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.

(gg) "Grantee" or "Grant Recipient" means the person or entity awarded a grant.

(hh) "Grantor State Agency" means a State Agency that awards a grant to a person or entity.

(ii) "Incentive" means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required.

(jj) "Interagency Agreement" means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.

(kk) "Invitation to Bid" means a procurement method where a contract is awarded to one or more bidders.

(ll) "Necessary Contract Provision" means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.

(mm) "No Cost Contract" means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.

(nn) "Notice of Intent to Award" means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.

(oo) "Non-responsive" means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.

(pp) "Parties" means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.

(qq) "Performance Bond" means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.

(rr) "Procurement" means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or service, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.

(ss) "Procurement Commission" means the State entity created and empowered by T.C.A. § 4-56-102.

(tt) "Procuring Agency" means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.

(uu) "Proposal" means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.

(vv) "Proposal Bond" means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.

(ww) "Proposer" means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.

(xx) "Proprietary" means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker or service provider that is protected under trade secret, patent, trademark, or copyright law.

(yy) "Proprietary Procurement" means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.

(zz) "Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

(aaa) "Protest Committee" means the committee created and empowered under T.C.A. § 4-56-103.

(bbb) "Purchase Order" means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase. Upon delivery to the Contracting Party, a "purchase order" becomes a binding contract on both parties.

(ccc) "Request for Information" means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.

(ddd) "Request for Proposals" means a written solicitation for written proposals to provide goods or services to the State.

(eee) "Request for Qualifications" means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals. A written response from a vendor is the appropriate response to a Request for Qualifications.

(fff) "Response" means a written response to a solicitation for goods or services.

(ggg) "Responsible Proposer" means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.

(hhh) "Responsive Proposer" means a person who has submitted a proposal, which conforms in all material respects, to the terms of a solicitation.

(iii) "Revenue Contract" means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.

(jjj) "Review Process" means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.

(kkk) "Rule Exception" means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.

(lll) "Rules" means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

(mmm) "Sealed Proposal" means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.

(nnn) "Services" means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.

(ooo) "Sole Source Procurement" means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

(ppp) "Solicitation" means a written document that facilitates the award of a contract to Contracting Parties for goods or services. Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals, and a Request for Qualifications.

(qqq) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. "Specification" includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(rrr) "State" means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

(sss) "State Agency" means the departments, agencies, and entities of the State of Tennessee.

(ttt) "State Architect" means the person, who oversees the Office of the State Architect.

(uuu) "Statewide Contract" means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by local governments, higher education and not-for-profit entities.

(vvv) "Subrecipient" is as defined in Office of Management and Budget (OMB) Circular A-133.

(www) "Term Contract" means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.

(xxx) "Vendor" means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-201.

0690-03-01-.03 Central Procurement Office.

(1) The Chief Procurement Officer shall serve as the head of the Central Procurement Office and act as the main point of contact and authority regarding all matters subject to these Rules.

(2) The duties and responsibilities of the Central Procurement Office shall include:

(a) Implementing these Rules;

(b) Providing necessary guidance, determinations and interpretations as required by these Rules or applicable law;

(c) Except as otherwise provided by these Rules or applicable law, procuring all goods and services for the State;

(d) Providing procedural direction governing procurements and contracts for goods and services in accordance with these Rules or applicable law;

(e) Providing guidelines for drafting procurement and contract documents in accordance with these Rules or applicable law;

(f) Providing technical assistance to State Agencies regarding procurements and writing contracts governed by these Rules or applicable law;

(g) Providing review and approval of procurements and contracts in accordance with these Rules or applicable law;

(h) Administering a procedure as defined in Central Procurement Office Policy for registering providers who may contract with the State pursuant to these Rules or applicable law;

(i) Resolving protests of Aggrieved Respondents;

(j) Promulgating and implementing Central Procurement Office Policy as approved by the Procurement Commission; and

(k) Performing such other duties and responsibilities as prescribed by these Rules, Central Procurement Office Policy or applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.04 Authority Delegated to State Agencies.

(1) A Delegated Authority to procure goods or services, award grants, issue loans or enter into revenue or no cost contracts shall be effective upon the approval of the Chief Procurement Officer and the Comptroller of the Treasury. No grant, loan, purchase, or contract shall be initiated and no obligation shall be incurred on behalf of the State by a State Agency unless a Delegated Authority is granted by the Chief Procurement Officer and the Comptroller of the Treasury. The approval process requirements for a Delegated Authority shall be more particularly prescribed by Central Procurement Office Policy. The general requirements for each Delegated Authority are as follows:

(a) Delegated Grant Authority:

1. A Delegated Grant Authority may be approved where:

(i) The program requirements are such that guidelines can be developed to give direction to the agency that issues a number of similar grants.

(ii) The individual grants involved are of such uniformity and standardization of processes, procedures and contract terms and conditions that there is little necessity or practicality for individual review.

2. Delegated Loan Authority: A Delegated Loan Authority shall set forth the terms and conditions for making a loan and include all provisions required by Central Procurement Office Policy.

3. Delegated Purchase Authority:

(i) A Delegated Purchase Authority may be approved for procurement of goods or services, provided that such purchases and any resulting contracts from such

purchases are subject to applicable provisions of these Rules and Central Procurement Office Policy.

(b) A Delegated Purchase Authority for the procurement of goods or services shall set forth all criteria, provisions and limitations consistent with Central Procurement Office Policy.

(2) General Requirements of Delegated Authorities:

(a) Each State Agency receiving a Delegated Authority shall file such documentation with the Chief Procurement Officer, in a form prescribed by Central Procurement Office Policy, which details the request for a Delegated Authority and the authorized signatories for the State Agency.

(b) All Delegated Authorities shall set forth all requirements prescribed by Central Procurement Office Policy.

(c) No changes shall be made to any Delegated Authorities without a written amendment to the Delegated Authorities requiring the same approval as the initial request.

(d) Records of the approval of the delegated authority shall be maintained by the Central Procurement Office

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-401.

0690-03-01-.05 Procurement Methods.

(1) Procurement Methods-Generally

(a) A procurement method for a given good or service shall be chosen based on the following considerations and minimum requirements:

1. All goods or services shall be procured by a method that the Chief Procurement Officer has determined to be in the State's best interests.

(i) Contracts shall be procured on a competitive basis where practicable, however, there are situations where a contract for goods or services on terms and conditions most favorable to the State cannot be procured using a competitive procurement method. In such an event, the Chief Procurement Officer may use a non-competitive procurement method if doing so is in the State's best interests. The request and justification to use a non-competitive procurement method must be documented as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall document and retain a record of the procurement process, including any negotiations upon which each contract is based, as prescribed by Central Procurement Office Policy.

(iii) All responses, irrespective of procurement method chosen, shall be evaluated in accordance with the terms of the solicitation.

(2) Request for Proposals ("RFP").

(a) An RFP shall comply with the following requirements:

1. The Central Procurement Office or Delegated State Agency shall prepare and issue an RFP and evaluate proposals in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer, in his or her sole discretion, shall determine whether an RFP that does not comply with these Rules and Central Procurement Office Policy requires rejection of the responses or cancellation of the RFP and rejection of all responses.

(i) A RFP shall contain the major categories to be considered in the evaluation of proposals together with the relative weight of each category. Those criteria shall include qualifications and experience, technical approach, and price as prescribed by Central Procurement Office Policy.

(ii) The Central Procurement Office or Delegated State Agency shall carefully consider all persons involved with the development, formulation, drafting, or review of a RFP and safeguard against any perceived or actual conflicts of interest.

(iii) The Central Procurement Office, Delegated State Agency, or other necessary State officials or entities, as required by applicable law, shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release. Except as otherwise delegated, a RFP or its revisions shall be approved by the Central Procurement Office based on the following:

(I) Application of the requirements of these Rules and Central Procurement Office Policy;

(II) Adequacy of the scope description; and

(III) Adequacy of the RFP's assurance of:

I. Fairness to respondents;

II. Clear, fair and open competition;

III. Achievement of procurement objectives; and

IV. Protection of the State's interests.

(iv) Upon approval, the Central Procurement Office or Delegated State Agency shall post the solicitation on the designated website of the Central Procurement Office. The posting of the solicitation on the designated website of the Central Procurement Office is the official public notice. All other forms of notice are merely a courtesy to the public and do not constitute official notice of a solicitation.

(v) After the technical proposal evaluation is completed, the cost proposal may be opened and evaluated, and the scores of both proposals may be combined to arrive at a total evaluation score. The Central Procurement Office may, as approved by the Chief Procurement Officer, determine the instances where a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal.

(vi) Proposal evaluations shall be impartial and ensure that all material requirements of the RFP have been met.

(I) Proposals shall be evaluated consistent with these Rules and Central Procurement Office Policy.

(II) Prior to reviewing proposals, each Proposal Evaluation Team member shall review a list of persons making proposals and determine if the member has a conflict of interest with serving on the Proposal Evaluation Team. Each member shall sign a conflict of interest statement as required by Central Procurement Office Policy. The conflict of interest statement shall be retained in the procurement file.

(III) Proposals shall be evaluated based on criteria set forth in the RFP and on the basis of factors pertinent to the goods or services being procured.

(IV) The Central Procurement Office or Delegated State Agency shall award a contract to the respondent whose response receives the highest evaluation score.

(V) Contract awards to a respondent other than the respondent receiving the highest evaluated score may only be awarded pursuant to Central Procurement Office Policy. Justification for the contract award and approvals shall be documented in the procurement file maintained by the Central Procurement Office.

(3) Invitation to Bid.

(a) The Central Procurement Office or Delegated State Agency may issue an invitation to bid that requests sealed bids. All procurements utilizing an invitation to bid method of procurement shall be conducted in accordance with these Rules and Central Procurement Office Policy.

(4) Informal Written, Verbal or Telephone Quotations.

(a) Informal procurement methods through use of written, verbal or telephone quotations for one-time purchases or contracts with a total value not to exceed current statutory maximum amounts may be utilized by a Delegated State Agency subject to approval or delegation in accordance with these Rules and Central Procurement Office Policy. Any such bid, proposal or record of the quotation shall be made part of the procurement file.

(5) Emergency Purchases.

(a) The Central Procurement Office or Delegated State Agency may make purchases of goods or services in the open market to meet emergencies arising from an unforeseen cause. Emergency purchases shall be made by contract in accordance with Central Procurement Office Policy and utilize competitive procurement methods or negotiations whenever practicable. The procuring agency shall maintain a procurement file that addresses the following:

(b) The circumstances leading to the emergency procurement;

(c) Procurement-related actions taken in response to the emergency, including procurement methods used; and

(d) A complete list of goods or services procured, including prices paid and total purchase amount.

(6) Sole Source Procurement.

(a) Whenever practicable, procurements should be competitive. Sole source procurements may be made when an item or service possesses specific characteristics that can only be filled by a single source or where exclusive rights exist. Sole source procurements shall require the State Agency to provide advance justification to the Central Procurement Office in accordance with Central Procurement Office Policy. Whenever practicable, competitive procurement methods, including competitive negotiation, should be used. All sole source procurements, regardless of

the dollar amount, require the Chief Procurement Officer's prior approval. Reporting of sole source procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy. The Chief Procurement Officer in approving the use of a sole source method of procurement shall consider and adequately document in the procurement file the following:

1. Whether the vendor possesses exclusive or predominant capabilities or the item or service contains features providing a superior utility not obtainable from similar vendors;

2. Whether the product or service is unique and available from only one source;

3. Whether the program requirements can be modified so that competitively procured goods or services may be used;

4. Whether items must be interchangeable or compatible with in-place items;

5. Whether or not it is in the State's best interests to conduct a pilot program for a defined period of time; or

6. Whether the economics, technical aspects, or other facts and circumstances of the procurement in question make the use of a sole source procurement method a more prudent choice than a competitive procurement method.

(7) Proprietary Procurement.

(a) Proprietary procurements may be made for a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product in which resellers are granted the right to sell. The State Agency shall provide justification to the Central Procurement Office in accordance with Central Procurement Office Policy. All proprietary procurements, regardless of the dollar amount require the Chief Procurement Officer's prior approval. All proprietary procurements shall be executed using procurement methods consistent with these Rules and Central Procurement Office Policy. Reporting of proprietary procurements shall be provided to the Comptroller of the Treasury in such form and time period as prescribed in Central Procurement Policy.

(8) Competitive Negotiation.

(a) A contract may be procured by competitive negotiation when the needed goods or services cannot be procured by competitive sealed bid. All negotiations and communications shall be conducted in accordance with these Rules and Central Procurement Office Policy. The Chief Procurement Officer and the Comptroller of the Treasury shall approve the use of competitive negotiation as a method of procurement. Once the negotiations have been concluded, a recommendation shall be made by the negotiating team to the Chief Procurement Officer and the Comptroller of the Treasury prior to entering into a contract.

(9) Direct Negotiation-General Services Administration.

(a) When a vendor maintains a General Services Administration agreement with the United States of America, or any agency thereof, the Chief Procurement Officer may directly negotiate with that vendor. The price shall not be higher than that contained in the contract between the General Services Administration and the vendor affected.

(10) Utility Contracts.

(a) The Central Procurement Office shall purchase or contract for all telephone, telegraph, electric light, gas, power, postal, or other services for which a rate has been established by a public

authority. All such contracts shall be procured in such a manner as the Chief Procurement Officer deems to be in the best interests of the State of Tennessee. Each such purchase or contract shall be made on a competitive basis, where practicable, in accordance with these Rules and Central Procurement Office Policy. If the Chief Procurement Officer determines that such procurement is only available from a single source or is proprietary, the use of a sole source or proprietary method of procurement may be utilized.

Rule Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-501, T.C.A. § 12-3-502, T.C.A. § 12-3-504, T.C.A. § 12-3-505, T.C.A. § 12-3-506, T.C.A. § 12-3-507, T.C.A. § 12-3-508.

0690-03-01-.06 Procurement Process-Elements of Solicitation Document and Process Prior to Award.

(1) Solicitations-Elements. Each written solicitation shall contain the following elements at a minimum:

(a) The description of the technical requirements for the goods or scope of services to be procured;

(b) Terms and conditions that clearly state the requirements for response and language to bind the parties in the event of award;

(c) Clear and definitive technical requirements and scope that allow for open competition where practicable;

(d) The solicitation shall contain directions regarding the submittal of proposals;

(e) Instructions for packaging, shipping, and delivering commodities purchased and instructions for storage by the vendor, where applicable or appropriate;

(f) Any requirements for proposal, performance or payment bonds;

(g) A timeline of the solicitation process that specifies the solicitation deadlines; A detailed description of the evaluation factors to be considered in evaluating the proposals, e.g., by way of example only, proposer qualifications, experience, technical approach, and cost;

(h) A declaration of whether the contract award is subject to successful contract negotiation;

(i) A statement that the Chief Procurement Officer shall have the sole discretion to amend a solicitation in writing at any time prior to award; and

(j) An estimate of the purchase requirements for the current contract period, if applicable and for the new contract period if the solicitation will result in an agency or statewide term contract.

(2) Inspection of Solicitation File.

(a) Each solicitation shall contain a schedule indicating the dates and times for solicitation opening, the timeline for evaluation and the anticipated Award date. Once the state issues the Notice of Intent to Award, the Open File Period begins. The solicitation file shall be open for public inspection for seven (7) calendar days upon request. The Central Procurement Office or a Delegated State Agency shall give the requestor a reasonable opportunity to inspect the solicitation file. If there is no protest of the Notice of Intent to Award, the State will proceed with the contract award.

(3) Cancellation of Solicitation or Rejection of Responses.

(a) The Chief Procurement Officer shall have the discretion to cancel a solicitation in its entirety and reissue the solicitation in whole or in part as documented and approved by any other approval authority of the original solicitation.

(b) The Chief Procurement Officer shall have the discretion to reject any and all responses.

1. Any response that does not meet the requirements of a solicitation may be considered nonresponsive and the response may be rejected.

2. Any response that restricts the rights of the State or otherwise qualifies the proposal may be considered nonresponsive and the response may be rejected.

3. All responses may be rejected by the Chief Procurement Officer or Delegated State Agency for the following reasons:

   (i) Unreasonably high prices or failure of all responses to meet technical specifications;

   (ii) Error or defect in the solicitation;

   (iii) Cessation of need;

   (iv) Unavailability of funds;

   (v) Lack of adequate competition; or

   (vi) A determination by the State Agency, with the concurrence of the Chief Procurement Officer and any other approval authority, that proceeding with the procurement would be detrimental to the best interests of the State.

4. Rejection of all responses and any approvals required shall be documented and an explanation shall be provided as to the reasons for the rejection of all responses.

5. A report of rejected responses and cancelled solicitations shall be reported in such format and timetable as requested by the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305, T.C.A. § 12-3-502.

0690-03-01-.07 Procurement Process-Proposal and Performance Bonds.

(1) Proposal Bond.

(a) The Chief Procurement Officer may require, in his or her sole discretion, a proposal bond issued by a surety company licensed to do business in the State of Tennessee. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract. Proposal bonds submitted by unsuccessful respondents shall be returned upon contract award. Personal checks shall not be accepted in the place of proposal bonds. Other forms of security to guarantee a proposal bond may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all forms of security to guarantee a proposal bond shall be approved by the Chief Procurement Officer before they are accepted as security for the respondent's performance.

(2) Performance Bond.

(a) The Chief Procurement Officer may require, in his or her absolute discretion, a performance bond issued by a surety company licensed to do business by the State of Tennessee. All performance bond amounts shall be stated as a set amount or as a percentage of the contract value, and the amount may be reduced proportionately as performance under the contract successfully moves forward. Performance bonds must be filed with the State of Tennessee within fourteen (14) calendar days after receipt of request by the Chief Procurement Officer or a Delegated State Agency. Personal checks shall not be accepted in the place of performance bonds. Other forms of security to guarantee performance may include an irrevocable letter of credit or a certificate of deposit or cashier's check from a state or national bank or a state or federal savings and loan association or other financial institution having a physical presence in Tennessee. The terms and conditions of all irrevocable letters of credit or certificates of deposit shall be approved by the Chief Procurement Officer before they are accepted as security for the Contracting Party's performance.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.08 Procurement Process-Communication and Negotiation.

(1) To ensure a transparent, consistent and equitable process in accordance with Central Procurement Office Policy, the Chief Procurement Officer may conduct communications as he or she determines to be in the best interests of the State, provided that any communication, clarification, or negotiation that may take place regarding any procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more respondents an unfair advantage or unfairly enable one or more respondents to improve their responses as a result and documented in the procurement file to support the final determination based on the information requested.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.09 Procurement Process–Determining Non-Responsiveness.

(1) If the Central Procurement Office determines that a respondent has provided, for consideration in a contractor selection process or in negotiations, information that does not meet the technical requirements of the solicitation, where the respondent knew or should have known the submitted information was materially defective due to the omission of information or the submission of incorrect information, the subject response may be determined nonresponsive and rejected as prescribed in Central Procurement Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.10 Procurement Process-Amendment or Withdrawal of Responses.

(1) A respondent may withdraw or amend a response in writing prior to its opening. After responses are opened, a respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the respondent or as prescribed in Central Procurement Office Policy. Any decision to allow withdrawal or amendment of a response shall be documented in the solicitation file.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.11 Award.

(1) Each contract shall be awarded by the Chief Procurement Officer on behalf of the Central Procurement Office or by a Delegated State Agency where authority has been delegated in accordance with these Rules and Central Procurement Office Policy. Notice of Intent to Award shall be communicated in writing or electronic transmission to all respondents. The Chief Procurement Officer is authorized to award a contract if doing so is in the best interests of the State.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-502.

0690-03-01-.12 Protest Procedures.

(1) Objection of Technical Requirements, Scope of Services or Specifications Prior to Evaluation of Responses.

(a) The State shall use technical requirements and scopes of services that are non-restrictive. Concerns regarding any defects or ambiguities involving a solicitation shall be made in writing and delivered to the Central Procurement Office no later than seven (7) calendar days after the solicitation has been posted to the website of the Central Procurement Office or the Delegated State Agency as the case may be.

(2) Protest After Notice of Intent to Award.

(a) Any aggrieved respondent, who has submitted a response to a solicitation subject to these Rules and applicable law, may file a written protest with the Chief Procurement Officer. The protest must be received by the Central Procurement Office within seven (7) calendar days from the beginning of the Open File Period.

1. On the first day of the Open File Period, all respondents are deemed to know all facts documented in the State's procurement files.

2. A written protest filed by a respondent with the Chief Procurement Officer shall enumerate and detail all grounds for the protest in accordance with these Rules.

3. The Chief Procurement Officer may consider the following grounds for protest and no others:

(i) The contract award was arbitrary, capricious, an abuse of discretion or exceeded the authority of the Central Procurement Office or the Delegated State Agency.

(ii) The procurement process was conducted contrary to a constitutional, statutory or regulatory provision.

(iii) The Central Procurement Office or the Delegated State Agency did not follow the rules of the procurement as set forth in the solicitation in making the contract award, and such failure to follow the rules of the procurement materially affected the contract award.

(iv) The procurement process involved responses that were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(v) The contract award was the result of a technical or mathematical mistake or error during the evaluation process.

4. The Aggrieved Respondent challenging the procurement process or contract award has the burden of proof and persuasion with respect to the invalidity of the procurement process or contract award.

5. All protests allowed under this Rule shall first be filed with the Chief Procurement Officer. The Aggrieved Respondent shall have the right to file a protest directly with the Protest Committee, but only in the event the Chief Procurement Officer fails to acknowledge a protest within fifteen (15) calendar days of receipt of a protest, fails to resolve the protest within sixty (60) calendar days, or consents in writing to a direct appeal to the Protest Committee.

6. A written protest that is filed with the Protest Committee shall:

(i) Meet the requirements of T.C.A. § 4-56-103;

(ii) Be delivered to the Chief Procurement Officer and the Comptroller of the Treasury; and,

(iii) Raise only grounds that were raised before the Chief Procurement Officer.

7. All protests, supporting documentation and the resolution or decisions thereof, shall be filed with and maintained by the Central Procurement Office in accordance with T.C.A. § 10-7-503.

8. A protester is required to exhaust his or her administrative remedies as provided by these Rules. The failure of an Aggrieved Respondent to timely raise a ground for protest in accordance with these Rules shall be deemed a waiver of the Aggrieved Respondent's right to seek review of such ground before the Chief Procurement Officer or the Protest Committee.

   (i) The final determination letter of a protest before the Chief Procurement Officer shall be reported to the Protest Committee and the Comptroller of the Treasury.

   (ii) The final determination letter of a protest before the Protest Committee shall be reported to the Comptroller of the Treasury.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-103, T.C.A. § 4-56-105, T.C.A. § 12-3-514.

0690-03-01-.13 Contract Finalization and Negotiation.

(1) In accordance with Central Procurement Office Policy, communication and negotiation shall be conducted in a manner that is in the best interests of the State, provided that any communication, clarification, or negotiation so conducted does not undermine the procurement process as set forth in the solicitation, these Rules or Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.14 Contract Type.

(1) Term Contracts

   (a) Agency Term Contract - State Agencies may establish term contracts for specific goods or services. The resulting contract shall contain a maximum liability dollar amount that represents the estimated dollar volume as prescribed in the solicitation.

   (b) Statewide Term Contract - The Central Procurement Office may establish statewide term contracts that all State Agencies must utilize and that may be used by local governments and higher education.

(2) Term Contract-General

   (a) A term contract for more than a period of twelve (12) months may provide that the State has the right to cancel at any time for convenience by providing written notice to the Contracting Party.

   (b) All term contracts shall contain a provision that provides for the termination of the contract at the end of any fiscal year in the event funds are not available.

   (c) The requirement of a multi-year contract shall be stated in the solicitation, and any multi-year contract shall be awarded pursuant to these Rules and shall not be for a period longer than sixty (60) months unless approved by the Chief Procurement Officer as being in the best interests of the State. The justification for the contract term exceeding sixty (60) months shall be maintained in the records of the Central Procurement Office. A report of all contracts awarded for a period longer than sixty (60) months in such format and at such interval determined requested shall be provided to the Comptroller of the Treasury.

   (d) There shall be no pricing agreement other than in a contract between the State and a Contracting Party.

(3) No Cost Contracts

(a) A "No Cost Contract" is a written contract that does not result in a pecuniary obligation between the State and a Contracting Party. Prior to proceeding with procuring a No Cost Contract, the Procuring Agency shall obtain the Chief Procurement Officer's approval.

(b) If a No Cost Contract Request is approved, the State Agency shall proceed with the procurement in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

(4) Revenue Contracts

(a) A "Revenue Contract" is a written contract where a State Agency provides specific deliverable services for monetary compensation. Prior to proceeding with any Revenue Contract negotiation, the State Agency must obtain the prior approval of the Chief Procurement Officer. If the request to enter into a Revenue Contract is approved, the State Agency shall proceed to procure the Revenue Contract in accordance with these Rules and Central Procurement Office Policy. The request shall be maintained in the records of the Central Procurement Office.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305.

0690-03-01-.15 Grants.

(1) Grant Contract

(a) A Grant Contract is a contract used to effect an award of funding or property to a grant recipient or Grantee. A grant shall benefit the general public or some population of the general public. Deliverables pursuant to a grant contract shall be comprised of services to third-party beneficiaries rather than services provided to the State.

(b) A Grant shall represent one of the following:

1. A contract effecting an award to a nonprofit organization, a for-profit organization or governmental entity, the primary purpose of which is to grant funds to finance operations or program activities;

2. A contract passing through a federal award that specifically identifies by name a Grantee or subrecipient; or

3. A contract effecting an award to fund work toward the completion of an activity or program that could not otherwise be more advantageously procured under a fee-for-service type contract. A grant representing this type of award must be determined by the Chief Procurement Officer to be in the best interests of the State.

(2) Cost Reimbursement Grant – A Cost Reimbursement Grant may create either a subrecipient or a vendor relationship between the Grantor State Agency and the Grantee as defined by Central Procurement Office Policy or applicable law.

(a) A Cost Reimbursement Grant Contract shall detail the State approved Grant Budget.

1. A Grant Budget shall contain a schedule itemizing one or more specific activities or purposes under the Grant Contract along with the maximum amounts that may be reimbursed for each. A Grant Budget shall also detail the total sum that shall be available for reimbursement for all purposes under the Grant Contract and that total shall equal the maximum liability under the Grant Contract.

2. A Grant Budget may also include a schedule of one or more specific units of service or milestones and the amounts that shall be reimbursed upon completion of each unit or milestone.

3. A Cost Reimbursement Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(2) Grant Budget.

(a) The Grantor State Agency shall conduct analyses and negotiations to ensure that Grant Budget amounts are appropriate to support the activities contemplated in the Grant Contract.

(4) Grantee Selection Process.

(a) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for noncompetitive selections. The Grantor State Agency shall also provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval. The Central Procurement Office shall maintain a record of the selection process.

(5) Endowment Grant.

(a) An Endowment Grant is a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public. An Endowment Grant is used to transfer funds to a grantee pursuant to an appropriation.

1. An Endowment Grant Contract shall meet the following requirements:

(i) The State has documented authority to make an Endowment Grant and the State can justify that a cost-reimbursement is not a more appropriate grant model to use;

(ii) The State's intention to make an endowment award free of conditions beyond the specified purpose of the grant is clear;

(iii) The State has made a written offer of an endowment award to the Grantee;

(iv) The Grantee has accepted the grant award in writing; and

(v) The fulfillment of the Grant's specific purpose by the Grantee is set forth in the Grant Contract.

(b) An Endowment Grant Contract shall result in the provision of services that are ancillary to the operation of State or federal programs, but does not involve the management and implementation of a State or federal program.

(c) An Endowment Grant Contract shall not create a subrecipient relationship between the State and the Grantee as defined by Central Procurement Office Policy.

(d) An Endowment Grant Contract must be determined to be in the best interests of the State by the Chief Procurement Officer.

(e) The Grantor State Agency shall document the Grantee selection process specifying whether it was competitive or non-competitive and detailing reasons for a noncompetitive selection. The State Agency shall provide a summary of said documentation to the Central Procurement Office with the Grant Contract as a condition for approval.

(f) An Endowment Grant Contract shall cite the State's authority to make the grant.

(g) An Endowment Grant Contract shall be written, signed by the parties, and approved in accordance with these Rules and Central Procurement Office Policy.

(h) Documentation of the justification to enter into an endowment grant shall be maintained by the Central Procurement Office.

(6) All programs funded by a Grant Contract are subject to audit. It is not intended, however, that the existence of more than one Grant Contract or source of funds for a single Grantee require more than one audit in a single audit period.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.16 General Requirements of Contracts.

(1) The purpose of a written contract is to reduce the parties' agreement to writing. No unwritten terms, conditions or understandings of the parties shall form the basis of a contract or an alteration of or amendment to a contract. All contracts shall be explicit and clearly state the rights and duties of each party. The terms and conditions of a contract subject to these Rules shall be written, in form and content, in accordance with Central Procurement Office Policy. Except as otherwise provided by these Rules, all contracts shall meet the following requirements:

(a) The Contracting Party's duties shall be clearly and specifically defined and detailed in such a manner as to ensure accountability. The Contracting Party's duties may include, but are not limited to type, scope, duration, form, quality, quantity, place, time, and purpose of goods or services.

(b) The State's duties shall be clearly defined and detailed in accordance with Central Procurement Office Policy. Contract terms shall clearly indicate the maximum liability, as applicable, to the State under the contract. The State's duties shall also include, but are not limited to, the method, timing and conditions of payment and the term of the contract.

(c) Where appropriate, additional provisions, necessary to specify the particulars of a contract and protect the interests of the State shall be written in accordance with Central Procurement Office Policy.

(d) If the Contracting Party is a corporation, its name shall be stated in the contract as it appears in its charter. The person signing on behalf of the corporation shall have authority to do so, and his or her position with the corporation shall be shown on the signature page. The Chief Procurement Officer may require that the Contracting Party provide a copy of its corporate charter or certificate of authority prior to contract approval.

(e) In circumstances deemed appropriate by the Chief Procurement Officer, the State may require a potential contractor to provide a performance bond or surety deposit prior to entering a contract subject to these Rules.

(f) As deemed appropriate, the State may require a potential contractor to provide proof of insurance prior to entering a contract subject to these Rules.

(g) Any reimbursement to a contractor for travel, meals, or lodging shall be subject to the amounts, limitations, and Rules set forth in the State Comprehensive Travel Regulations as amended. The limits and Rules set forth in the State Comprehensive Travel Regulations shall be construed to provide for the reimbursement of travel expenses incurred within the State of Tennessee at "in-State rates" and for the reimbursement of travel expenses incurred outside the State of Tennessee at "out-of-State rates."

(h) The State shall utilize Energy Star prescribed energy efficiency standards for all procurements involving the purchase of energy consuming products. Such procurements shall be made in accordance with these Rules and Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-905, T.C.A. § 12-3-906.

0690-03-01-.17 Necessary or Prohibited Contract Clauses and Rule Exceptions.

(1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.

(2) Necessary Contract Clauses for All Contract Types.

(a) Term. All contracts subject to these Rules shall specify the term of the contract. The term of the contract shall include the commencement date of the contract, the termination date, and any renewals of the contract via an amendment. Contracts subject to these Rules may only be renewed in writing, signed by the appropriate State official, and delivered electronically or through regular mail to the Contracting Party. One time purchases do not require the term to be specified.

(b) Maximum Liability for Goods or Services. All contracts subject to these Rules shall specify the maximum liability of the State for goods and services under the contract, including the Contracting Party's direct or indirect costs.

(c) Payment for Goods or Services.

1. All contracts subject to these Rules shall contain a provision that clearly sets forth the circumstances giving rise to the State's obligation to make payments for goods received or services performed. All contracts shall contain specific rates and prices and shall state that the rates and prices are firm for the duration of the contract unless specifically addressed in the contract.

2. All contracts shall generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. Advance payments under the contract prior to receipt of goods or performance of services should be avoided, but advance payments may be authorized by the Chief Procurement Officer if doing so is in the best interests of the State and in accordance with applicable law.

3. All contracts shall provide that payments made by the State under the contract shall first be certified by an authorized State official that goods received are acceptable in quantity and quality or that the contractor's performance of services is satisfactory and that the Contracting Party is entitled to payment under the contract. This certification shall be documented by the appropriate Procuring Agency staff's written approval of each invoice submitted for payment.

4. All contracts subject to these Rules that require an incentive payment shall detail the terms and conditions giving rise to the Contracting Party's entitlement to an incentive payment.

(d) Non- Discrimination. All contracts subject to these Rules shall contain a provision that prohibits the Contracting Party from discriminating against an individual on the basis of race, creed, color, religion, sex, age, handicap or disability, national origin or other protected class under State or federal law with respect to employment or other opportunities with the Contracting Party.

(e) Immigration. All contracts subject to these Rules shall contain a provision requiring a Contracting Party to certify that the Contracting Party has not knowingly utilized the services of illegal immigrants in the performance of its contract with the State for goods or services.

(f) Necessary Signatories. All contracts subject to these Rules shall specify that a contract shall not be effective until it is signed by all necessary signatories of the parties. The State's necessary signatories shall be established by Central Procurement Office Policy or may be established by statute.

(g) Contract Documents. All contracts subject to these Rules shall specify the documents that comprise the contract, in order of priority, between the State and any of its Contracting Parties.

(h) Entire Agreement, Amendments, Modifications, Renewals or Extensions. All contracts subject to these Rules shall contain a provision that provides that the contract reflects the entire agreement of the parties and that there are no other prior or contemporaneous agreements that modify, supplement or contradict any of the express terms of the contract. All contracts shall further provide that any amendments, modifications, renewals or extensions to the contract shall be in writing and signed by all parties who signed the Base Contract.

(i) Choice of Law and Venue. All contracts subject to these Rules shall provide that the contract shall be governed by the Laws of Tennessee and that the Tennessee Claims Commission or the State or federal courts in Tennessee shall be the venue for resolving disputes or disagreements under the contract.

(j) Retention of Records and Audit. A contract for the purchase of materials, supplies, equipment or services shall include the following clause regarding the contractor's requirement to retain and maintain books and records related to work performed or money received under the contract:

1. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that any such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

2. All contracts shall include this provision and such provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

(k) Independent Contractor. All contracts subject to these Rules shall provide that the Contracting Party is not an agent of the State, but rather, holds the status of an independent contractor.

(l) Force Majeure. All contracts subject to these Rules shall contain a provision that relieves the contracting parties of performance in the event of a force majeure, which includes, by way of example, acts of God, war, or civil unrest.

(m) Conflicting Terms and Conditions. All contracts subject to these Rules shall contain a provision that resolves conflicts between the contract's terms and conditions, the solicitation documents, the proposals and any amendments to the contract.

(n) Notice. All contracts subject to these Rules shall require a designated point of contact for the State and the Contracting Party to facilitate notice to the other party.

(o) Termination. All contracts subject to these Rules may contain provisions whereby the contract can be terminated by the State for breach. Termination for breach provisions shall specify the circumstances giving rise to breach, the time period of notice, and the cure period, if any.

(p) Termination for convenience provisions shall specify the time period of notice and payments to the Contracting Party up to the date of termination. All contracts subject to these Rules shall contain a Termination for lack of funding clause. All termination provisions shall specify the means by which notice of termination of the contract is communicated.

(q) Printing Contracts. All printing contracts subject to these Rules shall comply with T.C.A. § 12-7-103(d) by including a provision whereby the Contracting Party agrees that no publication shall be printed unless a printing authorization number has been obtained and affixed to the contract.

(r) Annual Report and Audit. All grant contracts subject to these Rules shall contain a provision pertaining to an annual report and audit of the grantee. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(s) Monitoring. All contracts subject to these Rules shall contain a provision that states that the contractor's activities conducted and records maintained pursuant to the subject contract shall be subject to monitoring and evaluation by the Comptroller of the Treasury. The Comptroller of the Treasury shall prescribe the wording of the provision to be used.

(t) Debarment and Suspension.

1. All contracts subject to these Rules shall contain a provision concerning the circumstances under which a contracting party may be considered debarred or suspended from doing business with the State. This contract provision shall act as a certification that the contracting party:

   (i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

   (ii) Has not, within a three (3) year period preceding the contract, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   (iii) Is not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and

   (iv) Has not within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

2. The Debarment and Suspension provision shall further require the Contractor to provide immediate written notice to the State if at any time the contracting party learns that the contracting party has failed to disclose information or that due to changed circumstances, its principals, affiliates or subcontractors are excluded or disqualified from contracting with any government entity.

(3) Prohibited Contract Clauses. The following terms shall not be included in a contract:

(a) Indemnification and Hold Harmless. Contract provisions requiring the State to indemnify and hold a Contracting Party harmless are prohibited.

(b) Limitation of Liability.

1. All limitations of liability must comply with T.C.A. § 12-3-701 and Central Procurement Office Policy. Limitations of Liability that do not comply with T.C.A. § 12-3-701 or Central Procurement Office Policy are prohibited.

2. Contractual provisions limiting a Contracting Party's liability for intentional torts, criminal acts, or fraudulent conduct are prohibited.

3. Contractual provisions that limit a Contracting Party's liability to an amount less than two times the value of the contract are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two times the value of the contract is in the best interests of the State.

(c) Bonus Payments. Bonus payment provisions are prohibited for all contracts subject to these Rules.

(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:

(a) The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.

(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.

1. The request for modification of a necessary contract clause shall contain justification that addresses the following:

(i) The text of the new clause sought to be used;

(ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;

(iii) The conditions in the market place that justify modification of the necessary contract clause; and

(iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

(c) The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-305, T.C.A. § 12-3-309, T.C.A. § 12-3-509, T.C.A. § 12-3-602, T.C.A. § 12-3-701, T.C.A. § 12-4-110, T.C.A. § 12-4-124.

0690-03-01-.18 Approval Process of Contracts and Amendments.

(1) All contracts and amendments shall be in writing and approved in accordance with these Rules and Central Procurement Office Policy.

(2) The Procuring Agency shall initiate approval of a contract or an amendment by delivering the contract or amendment, signed by the contract parties, to the Central Procurement Office as prescribed in Central Procurement Office Policy.

(a) A contract or amendment subject to these Rules shall be subject to the final approval of the Chief Procurement Officer. Accordingly, the Central Procurement Office shall:

1. Provide technical assistance toward the achievement of procurement goals and protection of the State's interests; and

2. Manage the review process to secure approval by other officials required by these Rules.

(3) Certain contracts require the approval of the following officials in addition to the Chief Procurement Officer:

(a) The Governor shall approve a contract between State Agencies that includes provisions for cooperative programs.

(b) The State Architect shall approve a contract that includes provisions for engineering or architectural services.

(c) The Comptroller of the Treasury shall approve a contract that includes:

1. Term provisions requiring or making possible expenditures from appropriations of more than one fiscal year;

2. Provisions for financial management (including electronic data processing systems impacting financial management), auditing, or accounting services;

3. Provisions concerning management services of all types, including management studies, planning services, public relations, evaluations, systems designs, data processing; or

4. Provisions that make the contract subject to Comptroller review pursuant to any applicable statute or appropriations act.

(d) The Commissioner of the Department of Human Resources shall approve a contract that includes:

1. Provisions for training State employees. This Rule shall not apply to contracts for systems development that provide for State employee training on the resulting system; or
2. Provisions permitting the procurement of services from an individual.

(e) Other officials may be required by law or as detailed in Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 4-56-108, T.C.A. § 12-3-303.

0690-03-01-.19 General Requirements of Contract Amendments.

(1) A contract amendment is a written contract document that modifies or supplements one or more terms or conditions of a contract and meets the following:

(a) A contract amendment shall meet the requirements of these Rules and Central Procurement Office Policy and shall clearly detail the additions, deletions, and modifications to the subject contract.

(b) A contract amendment should be determined by the Chief Procurement Officer to be either within the original scope of work and within the intent or a logical extension of the Base Contract.

(c) If any change to the Base Contract results in a change to the scope of work, extends the contract term (of a contract that did not provide for a term extension), or increases the maximum liability of a contract, the Procuring Agency must memorialize these changes in a contract amendment and shall justify the contract amendment in writing. The amendment and justification is subject to the approval of the Chief Procurement Officer.

(d) A contract amendment shall require the approval of the same officials required for approval of the Base Contract. If the amendment changes the scope or the terms of the Base Contract in such a manner as to require additional review as defined in these Rules or by applicable law, said amendment and all subsequent amendments of the contract shall require an additional approval.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.20 State Agency Certification.

(1) The head of any State Agency contracting with a Contracting Party that is not an entity of the State shall determine and indicate, by signing the contract or authorizing the issuance of a purchase order:

(a) The goods or services are in fact needed;

(b) The goods or services cannot be satisfactorily or efficiently provided by the State;

(c) Funds have been appropriated to meet the resulting financial obligations of the State for the goods or services, and the Procuring Agency has a sufficient balance of funds available in its budget, not otherwise obligated, encumbered, or committed, to meet the obligation; and

(d) The Contracting Party has the legal capacity to enter into a contract with the State and doing so will not contravene applicable State or federal law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.,.C.A. § 12-3-511.

0630-03-01-.21 Contractor Registration.

In order to be awarded a contract for goods or services, a vendor must submit appropriate paperwork to Finance and Administration, Division of Accounts, to receive payment.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.22 Instructions for Solicitations and Contracts-Delivery and Commencement of Work.

(1) Each solicitation and each contract shall clearly state instructions for authorizing services or delivery of goods.

(2) Except where exempt by these Rules or Central Procurement Office Policy, any Contracting Party who manufactures or delivers a product or service without an executed contract or a written purchase order and who delivers a product or service not specifically authorized by a contract or purchase order does so at his or her own risk.

(3) A signed contract affixed with the signature of all necessary signatories required for approval, including any necessary electronic approvals, of a contract or a duly authorized and issued purchase order shall be sufficient to authorize a contractor or Grantee to deliver goods or perform services under a contract or purchase order. No official or employee of the State, except the Chief Procurement Officer, shall have the authority to authorize a Contracting Party to commence work before a contract has been duly approved and executed or a purchase order is issued according to these Rules.

(4) All materials, equipment, supplies, and services are subject to inspection and testing. Items that do not meet contract specifications may be rejected in the sole discretion of the Chief Procurement Officer or the

Delegated State Agency. Failure to reject upon receipt, however, does not relieve the contractor of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the State may seek damages regardless of whether services have been performed or a part or all of the goods have been consumed.

(5) Cancellation of State purchase orders may be executed by the Central Procurement Office or the Delegated State Agency. Purchase orders may be cancelled in writing by the Central Procurement Office in the case of a contractor default. A contractor may request cancellation in writing and the State may grant relief, in the sole discretion of the Chief Procurement Officer, if the contractor is prevented from performance by an act of war, order of legal authority, act of God, other unavoidable causes not attributed to the fault or the negligence of the contractor, or if doing so is in the State's best interests.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.23 General Requirements of Payments.

(1) Contract payments shall be made in accordance with the payment terms and conditions section of the contract. No payment shall be made until the contract is approved as required by these Rules and Central Procurement Office Policy. The State is not liable to a Contracting Party for services performed or goods delivered prior to the effective date of a contract or the Contracting Party's receipt of a notice to proceed sent by the Central Procurement Office or a Delegated State Agency. Notwithstanding the foregoing, the Chief Procurement Officer shall have the authority to authorize a Contracting Party to perform services or commence work before a contract has been fully executed in accordance with these Rules and Central Procurement Office Policy.

(2) All contracts in which the State is to make one or more payments to a Contracting Party shall provide that payments are to be made upon submittal of invoices by the contractor, after delivery of goods or the performance of the portion of the service to which each payment represents, except that Grant Contracts may provide for advance payments in accordance with these Rules and Central Procurement Office Policy.

(3) Except as provided in this Rule, no payment shall be made for performance under a contract unless a procuring State Agency official certifies that the contractor's work progress has been evaluated, is satisfactory, and is sufficient according to the terms of the contract to justify the payment requested. This certification shall be documented by the appropriate procuring State Agency staff's written approval of each invoice submitted for payment.

(4) All procuring State Agencies shall maintain adequate documentation to support all payments.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-509.

0690-03-01-.24 Statewide Contract Management.

The Central Procurement Office shall be responsible for the management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts procured by the Central Procurement Office on behalf of the State Agency or within their delegated authority.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-104, T.C.A. § 4-56-105.

0690-03-01-.25 Contract Termination.

If a State Agency determines it to be in the best interests of the State to terminate a contract before the contract end date, either for cause or convenience, the head of the State Agency shall request and obtain the approval of the Chief Procurement Officer prior to any notice of contract termination.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.26 Exceptions to Rules.

The Chief Procurement Officer shall have the authority to make exceptions to these Rules, if doing so is in the State's best interests and such exception is not contrary to applicable law.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105.

0690-03-01-.27 Agency Term Contract Management and Subrecipient Monitoring.

(1) The procuring State Agency shall be responsible for contract management of all Grant and Term Contracts.

(2) Contract management is a State Agency's ongoing continuum of processes for administering and reviewing the performance of each contract for efficiency, cost-effectiveness, and provider accountability and results. Contract management may include, but is not limited to:

(a) Allocating adequate staff and resources to contract management;

(b) Reviewing Contracting Party performance in terms of progress and compliance with contract provisions;

(c) Communicating with Contracting Parties to ensure maximum performance and intended results;

(d) Approving and remitting payments for acceptable work in accordance with contract provisions and applicable law;

(e) Maintaining records of each contract that documents activities such as procurement, management, and subrecipient monitoring, if applicable; and

(f) Evaluating contract results in terms of the achievement of organizational objectives.

(3) Each State Agency shall establish an annual contract management plan addressing the general management of contracts for which it is responsible.

(a) A contract management plan should include:

1. Information about the specific staff positions and resources that will be assigned to contract management;

2. A description of the organization of identified staff and resources for the contract management responsibility; and

3. An explanation of how the contract management staff will review and supervise Contracting Party performance, progress, contract compliance, and pricing.

(b) Before each calendar year for which the plan is applicable, the Chief Procurement Officer or chief executive of the Delegated State Agency must approve the annual contract management plan and, before submitting any contract for approval in that year, submit a copy to the Central Procurement Office.

(4) Each State Agency should identify the specific staff responsible for the management of each contract under its purview and ensure that such staff has adequate training. Such training may include:

(a) Definition of needs;

(b) Procurement law, Rules, and Central Procurement Office Policy;

(c) Basic record keeping;

(d) Program specific goals, objectives, purpose, and responsibilities;

(e) Interpersonal communication;

(f) Project management skills and tools; and

(g) Evaluation techniques, skills, and tools.

(5) Each State Agency shall implement such management practices as necessary to ensure:

(a) Accountability, results, and positive programmatic impact from contracts (as opposed to mere contract compliance).

(b) The use of diverse talents of the agency's "centralized" units (e.g., contract administration, audit, fiscal, etc.), where possible, as "support" staff to assist or oversee program staff in contract management responsibilities.

(6) The efficacy of each State Agency's contract management shall be subject to on-going evaluation and improvement, and the responsibility for which shall belong to:

(a) The procuring State Agency's program area having responsibility for each contract;

(b) The procuring State Agency's functional area having responsibility for internal controls, financial integrity, and internal audit;

(c) The procuring State Agency's executives; and

(d) The Comptroller of the Treasury (pursuant to his or her power to review and audit State government under Title 8, Chapter 4 and Title 9, Chapter 18 of the Tennessee Code).

(7) Subrecipient monitoring is required, in addition to contract management, for the specific subset of contracts and grant contracts that are characterized by a subrecipient relationship. Subrecipient contract monitoring is an additional, independent review that is used to determine a subrecipient's compliance with the requirements of applicable State or federal programs, laws and regulations, and stated results. Subrecipient monitoring includes the review of internal controls to determine if the financial management and the accounting system are adequate to account for program funds in accordance with State or federal requirements.

(a) Staff with subrecipient monitoring responsibilities must have duties separate from program staff to ensure independence and objectivity.

(b) Each State Agency subject to these Rules shall develop and obtain Central Procurement Office approval of an annual subrecipient monitoring plan that identifies all of its subrecipients and all subrecipients to be monitored. The deadline for this plan will be established by Central Procurement Office Policy.

Authority: T.C.A. § 4-56-102, T.C.A. § 4-56-105, T.C.A. § 12-3-305.

0690-03-01-.28 Contract with Current or Former State Employee.

(1) A State Agency shall not contract with or consider a proposal from an individual who is, or within the past six months has been, a State employee.

(a) For the purposes of applying this Rule,

1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State

employee shall not be considered a contract with or a proposal from the employee and shall not constitute a conflict of interest prohibited by these Rules.

(2) A State employee may be compensated for performing services for a State agency other than the State agency employing the individual (e.g., a State accountant might be paid for teaching an evening accounting course at a community college). Such agreements are subject to the Rules of the Department of Finance and Administration, Chapter 0620-03-02, et seq., and not the Rules of this chapter.

Authority: T.C.A. § 4-56-102, T.C.A. § 12-4-103.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Procurement Commission on 10/31/2012 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/01/12

Rulemaking Hearing(s) Conducted on: (add more dates). 12/21/12

CHARLOTTE L. McKINNEY
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Date: 09/30/13

Signature: Michael F. Perry

Name of Officer: Michael F. Perry

Title of Officer: Chief Procurement Officer

Subscribed and sworn to before me on: 9/30/13

Notary Public Signature: Charlotte L. McKinney

My commission expires on: May 5, 2015

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

R E Cooper Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

10-16-13
Date

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Filed with the Department of State on: 10/22/13

Effective on: 1/20/14

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Short Term Objectives for an Individualized Education Program (IEP)
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-10-101 and 49-10-701
EFFECTIVE DATES:	March 31, 2014 through June 30, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule change will remove the requirement for benchmarks or short term objectives in all IEP's. According to the State Board of Education: (1) the benchmarks are not necessary, as the responsiveness to intervention plan and the mandatory high school course of study accurately measure growth and accountability; and (2) removing benchmarks or short term objectives will lessen the need to remove students with disabilities from the general classroom.

Comments from July 17, 2013 Rulemaking Hearing

- Sherry Wilds, Senior Disability Rights Attorney, Disability Law and Advocacy Center
  Transition planning is one of only three areas of work for special education students; early and effective transition changes lives. There are concerns about changing the transition age from fourteen to sixteen. Many states are transitioning to 14. The U.S. Department of Education encourages states to transition at 14. Also concerned that transition age before sixteen will not occur unless required. Look at it as "course of study +"; students with disabilities need this course of study and transition.

- Joey Ellis, Support and Training for Exceptional Parents
  There is no validity in the idea that focus course of study conversations alone are effective in the transition process. The age of transition should remain at the age of fourteen. Transition plans focus on self-advocacy more than the course of study alone will.

- Elise McMillan, Vanderbilt Kennedy Center
  Please reconsider the move from age fourteen to sixteen. Age sixteen is too late to begin transition services. It would be a step backward in light of how we're moving forward in so many areas.

- Carol Needleman, Parent
  Age sixteen is too late to begin transition services. Transition plans also provide social and emotional support, which is critical to the success of students with disabilities.

- Beth Cruise, Kids Rights Program, Metropolitan Nashville Public Defender's Office
  Students need to be provided with more support during transitioning. Transition planning at sixteen is too late.

- Adam Horn, Clinical Director of Tennessee Voices for Children
  I am urging you to maintain the transition age to fourteen. Transition plan works best toward the beginning of services.

- Eric Carter, Professor of Special Education at Vanderbilt University
  I am urging the state to maintain the transition age to fourteen. Research says that beginning transition before age sixteen results in positive outcomes for students with disabilities. Transition needs are rarely addressed in course of study only--- this is supported by research. The age of fourteen is a formative point where children develop career aspirations. It gives parents sufficient timing to plan for their children's aspirations. The age of fourteen is a developmentally optimal time. The State has improved in the quality of transition plans. We will see outcomes improving where we are. But we may see those decline if we change the age.

- Kerry Guiden, ARC of Tennessee
  It is critical to start transition planning at age fourteen. Tennessee has always gone above and beyond what the federal government requires. The federal government is considering moving it to age fourteen. Course of study planning does not necessarily address the specific needs of students with disabilities.

- Angela Webster, Public Policy Advisor and DLAC and Representative of Disability Coalition on Education
  I am urging you to retain transition planning to age fourteen. This may have a negative impact on the work of other state agencies that have grant obligations.

- Chip Fair, Rutherford Co. Schools, TASSE
  Losing the short term objectives is not a bad thing. With good annual goals and good teaching, the outcomes can still be a good thing. The transition age at sixteen may be okay for students who stay in school until twenty-two. I am not in opposition to the rule change. Social and emotional goals needs can be addressed at any time.

- Shelly Baldwin, Parent
  Moving the age from age fourteen to sixteen, you are losing time to help students with disabilities to achieve their goals.

- Janet Chall, Disability Coalition on Education, Autism Society of Middle Tennessee
  The transition planning for her child was weak, but since she was a knowledgeable parent, she was able to bolster what was weak. Students without knowledgeable parents need earlier and more developed transition planning may not have this benefit. It is important to have short term benchmarks.

Regulatory Flexibility Addendum
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
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Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 10-23-13
Rule ID(s): 5600
File Date: 10/23/13
Effective Date: 3/31/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-01-09	Special Education Programs and Services
Rule Number	**Rule Title**
0520-01-09-.12	Definition of Individualized Education Program (IEP).

0520-01-09-.12 DEFINITION OF INDIVIDUALIZED EDUCATION PROGRAM (IEP).

~~The IEP for each child must include:~~

~~(1) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:~~

> ~~(a) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (the same curriculum as for children without disabilities), or for preschool children to participate in appropriate activities; and~~
> ~~(b) Meeting each of the child's other educational needs that result from the child's disability.~~

~~(2) Strategies that are effective in realizing the child's goals and either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs.~~

~~(3) Short-term objectives or benchmarks for each annual goal. Short-term instructional objectives generally break the skills described in the annual goal down into discrete components. As an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short-term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child.~~

~~(4)~~ Prior to the 9th grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all students will develop an initial four (4)-year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the students IEP after approval by the IEP team.

~~(5) For each student beginning at age sixteen (16) (or younger, if determined appropriate by the IEP team), the plan of study will be revised to ensure the completion of the child's high school program of study and a smooth transition from high school. The plan must include a statement of needed transition services, including, if appropriate, a statement of the interagency responsibilities and any needed linkages. This plan may be developed through a process in general education but a copy must be in the students IEP after approval by the IEP team.~~

~~(6) A statement of how the child's progress toward the annual goals will be measured and how the child's parents will be informed of the child's progress. Progress reports must be provided at lease equivalent to those provided to non-disabled children.~~

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice				X	
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/26/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 10/1/13

Signature: [signature]

Name of Officer: Dannelle F. Walker

Title of Officer: General Counsel

PHYLLIS E. CHILDRESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

MY COMMISSION EXPIRES: January 9, 2016

Subscribed and sworn to before me on: 10/1/13

Notary Public Signature: Phyllis E. Childress

My commission expires on:

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

10-15-13
Date

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Filed with the Department of State on: 10/23/13

Effective on: 3/31/14

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
SUBJECT:	Non-Public School Approval Process
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section §§ 49-1-201, 49-1-302 and 49-50-801
EFFECTIVE DATES:	March 31, 2014, through June 30, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Currently, the State Board rule on category III schools lists only one regional accreditation agency. This rule amendment is necessary to expand and solidify the list of regional accreditation agencies recognized by the State Board. This change will not affect any existing schools under this category.

Regulatory Flexibility Addendum
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This will have no impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 10-24-13
Rule ID(s): 5601
File Date: 10/23/13
Effective Date: 3/31/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-07-02	Non-Public School Approval Process
Rule Number	**Rule Title**
0520-07-02-.04	Category III: Regional Accreditation

Schools in this category are accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), any accrediting association recognized by the National Association of Independent Schools (NAIS) Commission on Accreditation (e.g., the Southern Association of Independent Schools (SAIS)) or the National Council for Private School Accreditation (NCPSA) according to the procedures and criteria established by the association.

~~Schools in this category are accredited by one (1) of the regional accrediting associations (e.g., the Southern Association of Colleges and Schools (SACS)) according to the procedures and criteria established by the association.~~

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice				X	
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/26/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 9-9-13

Signature: Gary Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director

PHYLLIS E. CHILDRESS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 9/9/13

Notary Public Signature: Phyllis E. Childress

MY COMMISSION EXPIRES: January 9, 2016

My commission expires on:

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

R E Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

10-10-13
Date

Department of State Use Only

Filed with the Department of State on: 10/23/13

Effective on: 3/31/14

Tre Hargett
Secretary of State

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2013 OCT 23 AM 10: 22

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION:	Tennessee Department of Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Medicaid: Pharmacy Lock-in Program Requirements
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105; 71-5-109 and 71-5-146
EFFECTIVE DATES:	January 1, 2014 through June 30, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule expands the TennCare Medicaid pharmacy lock-in requirements to address member abuse or overutilization of the TennCare pharmacy program. The rule identifies activities and indicators of abuse or overutilization. The rule also establishes program procedures, including procedures regarding enrollment, provider selection, status reviews and emergency pharmacy services.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments on these rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

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For Department of State Use Only

Sequence Number: 10-03-13
Rule ID(s): 5586
File Date: 10/3/13
Effective Date: 1/1/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

X Amendments
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.01	Definitions
1200-13-13-.13	Members Abuse and Overutilization of the TennCare Program

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

The Table of Contents of Rule Chapter 1200-13-13 TennCare Medicaid is amended by deleting the Title of Rule Number 1200-13-13-.13 Members Abuse and Overutilization of the TennCare Program from the Table of Contents in its entirety and replacing the Rule Title in the Table of Contents as follows:

1200-13-13-.13 Member Abuse or andOverutilization of the TennCare Pharmacy Program.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-146.

Rule 1200-13-13-.01 Definitions is amended by deleting Paragraph (66) Lock-In Provider and replacing it with amended Paragraph (66) Lock-In Provider as follows:

(66) Lock-In Provider. A provider, pharmacy or physician, chosen by an enrollee on pharmacy lock-in status to whom the enrollee is assigned by TennCare for the purpose of receiving covered pharmacy services.

~~(66) Lock-In Provider shall mean a provider, either pharmacy or physician, who an enrollee on pharmacy lock-in status has chosen and to whom an enrollee is assigned by TennCare or the MCO for purposes of receiving covered pharmacy services.~~

Rule 1200-13-13-.01 Definitions is amended by deleting Paragraph (67) Lock-In Status and replacing it with amended Paragraph (67) Lock-In Status as follows:

(67) Lock-In Status. The restriction of an enrollee to a specified physician, or to a specified pharmacy provider at a specified single location.

~~(67) Lock-In Status shall mean the restriction of an enrollee to a specified and limited number of pharmacy providers.~~

Rule 1200-13-13-.01 Definitions is amended by deleting the word "provide" from current Paragraph (91) PBM (Pharmacy Benefits Manager) and replacing it with the word "administer" so that as amended Paragraph (91) PBM (Pharmacy Benefits Manager) reads as follows:

(91) PBM (Pharmacy Benefits Manager) shall mean an organization approved by the Tennessee Department of Finance and Administration to administer ~~provide~~ pharmacy benefits to enrollees to the extent such services are covered by the TennCare Program. A PBM may have a signed TennCare Contractor Risk Agreement with the State, or may be a subcontractor to an MCO.

Rule 1200-13-13-.01 Definitions is amended by inserting alphabetically the following new Paragraphs and numbering all definitions appropriately:

( ) Controlled Substance. A drug, substance, or immediate precursor identified by the U.S. Department of Justice, Drug Enforcement Administration or by the Tennessee Drug Control Act as having the potential for abuse and the likelihood of physical or psychological dependence if used incorrectly.

( ) Prescriber. An individual authorized by law to prescribe drugs.

( ) Targeted Pharmacy. A pharmacy meeting one of the following criteria:

(a) It is located outside the State of Tennessee.

(b) It has had previous controlled substance violations with the Tennessee State Board of Pharmacy.

(c) It appears to be an outlier to the norm in its dispensing of controlled substances.

(d) It has filled controlled substance prescriptions that are covered by TennCare for members locked in to a different pharmacy after being notified that the member was locked in to a different pharmacy.

( ) Targeted Prescriber. A prescriber with prescribing authority who is ranked as a top prescriber of controlled substances based on multiple factors which may include but are not limited to any of the following:

(a) The percentage of controlled substances prescribed.

(b) The percentage of Schedule II controlled substances prescribed.

(c) The percentage of Schedule III controlled substances prescribed.

(d) The percentage of short acting single ingredient opiates prescribed.

(e) The percentage of short acting combination product opiates prescribed.

(f) The percentage of long acting opiates prescribed.

(g) The average morphine equivalents per day prescribed.

(h) The percentage of rejected claims of controlled substances.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-146.

Rule 1200-13-13-.13 "Members Abuse and Overutilization of the TennCare Program" is deleted in its entirety and replaced with the following:

1200-13-13-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program.

(1) The Bureau is authorized to implement and maintain a pharmacy lock-in program designed to address member abuse or overutilization. Activities which may indicate abuse or overutilization justifying placement on lock-in or prior approval status include but are not limited to the following:

(a) Forging or altering a prescription for drugs.

(b) Selling TennCare paid prescription drugs.

(c) Failing to control pharmacy overutilization activity while on lock-in status.

(d) Visiting multiple prescribers or pharmacies to obtain controlled substances.

(e) Trading, swapping or selling a TennCare card.

(f) Failing to promptly report the loss or theft of a TennCare card.

(g) Forging or altering a TennCare card.

(h) Knowingly providing false, incomplete, inaccurate or erroneous information to provider(s) in order to receive covered services for which the member is ineligible.

(i) Permitting the use of a TennCare card by anyone other than the member to whom the card is assigned in order to receive or attempt to receive services.

(2) The TennCare pharmacy lock-in program shall be administered by the Bureau. Monitoring of enrollee activities listed in Paragraph (1) shall be conducted by the Bureau, the MCCs, including the PBM, and the TennCare Office of Inspector General (OIG). When an enrollee has been identified as having participated in any abuse or overutilization activities, including but not limited to the activities listed in Paragraph (1), the enrollee's name shall be referred to the Bureau as appropriate or potentially appropriate for the lock-in program as follows:

(a) Appropriate for the lock-in program:

1. Any enrollee who has been identified by the OIG as having been convicted of TennCare fraud or a drug-related offense.

2. Any enrollee who has used buprenorphine/naloxone (Suboxone®) or buprenorphine (Subutex®) for office based opioid addiction treatment within the previous six (6) months.

(b) Potentially appropriate for the lock-in program:

1. Any enrollee who has been arrested for TennCare fraud.

2. Any enrollee who has been arrested for a drug-related offense.

3. Any enrollee who has obtained multiple controlled substance prescriptions over a 90-day period that meet one of the following conditions:

(i) The prescriptions were filled at three (3) or more pharmacies and written by three (3) or more prescribers.

(ii) The prescriptions were filled at one (1) or more targeted pharmacies and written by two (2) or more prescribers.

(iii) The prescriptions were filled at two (2) or more targeted pharmacies and written by one (1) or more prescribers.

(iv) The prescriptions were filled at one (1) or more targeted pharmacies and written by one (1) or more targeted prescribers.

(v) The prescriptions were filled at two (2) or more pharmacies and written during three (3) or more emergency room visits.

(3) Pharmacy lock-in procedures shall include:

(a) A determination to place an enrollee who has been referred as appropriate or potentially appropriate for the lock-in program on lock-in status shall be made by the TennCare Pharmacy Director or designee after the enrollee's relevant pharmacy claims data has been reviewed by clinical staff.

(b) Any enrollee determined to be appropriate for the lock-in program shall be notified by the Bureau or the MCC prior to the imposition of lock-in status. The notice shall include a brief explanation of the lock-in program, the reason for the determination to place the enrollee on lock-in status, the date the lock-in will become effective, and the information necessary for the enrollee to appeal the decision of the Bureau, pursuant to Rule 1200-13-13-.11.

(c) If an enrollee fails to appeal placement in the lock-in program or an appeal is not resolved in his favor, the enrollee will be provided TennCare pharmacy services only at the lock-in provider to which the enrollee is assigned.

(4) Lock-in provider selection. A pharmacy will qualify for and may be selected by the enrollee as a lock-in provider only if it meets all the following criteria:

(a) It is enrolled in the TennCare Pharmacy Network;

(b) It is within the State of Tennessee;

(c) It is a full-service pharmacy that carries all medications normally carried by pharmacies;

(d) It is not a mail order or specialty pharmacy;

(e) It is not a targeted pharmacy;

(f) It is a single pharmacy location at a specific address. A chain pharmacy may be selected but only the specific named location may be used, not multiple locations or outlets of the chain; and

(g) It is in proximity to the enrollee's residence, which must be the current address on file with the

Bureau.

(5) After twelve (12) months a member may request a change of lock-in provider once each year. Additional changes are limited to the following reasons:

(a) The member has moved and his new address is at least fifteen (15) miles from the lock-in pharmacy and he has updated his address with the Bureau.

(b) The member's lock-in pharmacy has permanently closed.

(c) The member's lock-in pharmacy has voluntarily dismissed the enrollee from its practice and has notified the Bureau and the PBM.

(d) The Bureau may, at its sole discretion, determine that there is a compelling need to change the member's lock-in pharmacy.

(6) Review of lock-in status. The Bureau or the MCC shall periodically review the claims information of members on lock-in status to determine the need for continued lock-in or escalation to prior approval status.

(a) Lock-in status will be discontinued if the Bureau determines that a member has met all of the following criteria for at least six (6) consecutive months:

1. Has not paid cash for any controlled substance prescriptions covered by TennCare.

2. Has not received any narcotic medications while on buprenorphine or buprenorphine/naloxone for addiction.

3. Has received TennCare reimbursed controlled substance prescriptions from only one (1) provider.

4. Has received TennCare reimbursed prescriptions from only one (1) pharmacy.

(b) If a member is removed from lock-in status, the Bureau or the MCC will monitor the member for changes in utilization patterns and return him to lock-in status if appropriate.

(7) Prior approval status.

(a) A member against whom criminal process alleging TennCare fraud has been issued or who has been convicted of TennCare fraud shall automatically be placed on prior approval status.

(b) Lock-in status shall be escalated to prior approval status if a member on lock-in status meets three (3) of the following criteria over a 90 day period:

1. Has paid cash for three (3) or more controlled substance prescriptions covered by TennCare.

2. Has filled prescriptions for controlled substances at two (2) or more pharmacies.

3. Has received controlled substance prescriptions from two (2) or more prescribers.

4. Has received a narcotic prescription while receiving buprenorphine or buprenorphine/naloxone for addiction.

(c) A member who has been treated in a hospital emergency department for an overdose of a controlled substance (as identified in the most recently available TennCare data) or an illicit substance identified by toxicology shall automatically be placed on prior approval status.

(8) Emergency pharmacy services may be obtained with a TennCare or MCC override of a member's lock-in status. The PBM has clinical staff available at all times to respond to emergency situations. The PBM must verify that a genuine emergency exists, such as documented proof from the lock-in pharmacy that it is temporarily out of stock of a needed medication. A lock-in override will not be provided simply because a pharmacy is closed for the day unless a true medical emergency exists.

~~1200-13-13-.13 Members Abuse and Overutilization of the TennCare Program~~

~~(1) The TennCare Bureau and the MCCs shall possess the authority to restrict or lock-in TennCare enrollees to a specified and limited number of pharmacy providers if the TennCare Bureau or the MCCs has determined that the enrollee has abused the TennCare Pharmacy Program. Such abuse includes, but shall not be limited to the following:~~

~~(a) Forging or altering prescription drugs;~~

~~(b) Selling TennCare paid prescription drugs;~~

~~(c) Filing to control pharmacy overutilization activity while on lock-in status; or~~

~~(d) Visiting multiple prescribers or pharmacies to obtain controlled substances.~~

~~(2) All pharmacy lock-in programs established by the TennCare Bureau or the MCCs must contain at least the following elements:~~

~~(a) Criteria for selection of abusive or overutilizing enrollees – Pharmacy lock-in program must demonstrate, in detail, how the program will identify lock-in candidates.~~

~~(b) Methods of evaluation of potential lock-in candidates - Pharmacy lock-in programs must describe how the program will review lock-in candidates to ensure appropriate patterns of health care utilization are not misconstrued as abusive or overutilization.~~

~~(c) Lock-in status - Pharmacy lock-in programs must describe the exact process used to notify the lock-in enrollee, notify the lock-in pharmacy and physician providers, coordinate the lock-in activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.~~

~~(d) Prior approval status - Pharmacy lock-in programs may include placing an enrollee in a prior approval status in which some or all prescriptions such as controlled substances, require prior authorization. The program must describe the exact process used to notify the enrollee of prior approval status, notify the pharmacy of the enrollee's prior approval status, coordinate the prior approval status activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.~~

~~(e) Emergency Services - Pharmacy lock-in programs must describe, in detail, how pharmacy services will be delivered to enrollees on lock-in or prior approval status in the event of an emergency.~~

~~(3) Pharmacy lock-in program procedures shall include:~~

~~(a) Prior to imposing lock-in status upon a TennCare enrollee, the TennCare Bureau or the MCC shall provide appropriate notice to TennCare enrollees, informing enrollees that they may only use one pharmacy provider and of their right to appeal this action.~~

~~(b) If the enrollee fails to appeal this lock-in or the appeal of the lock-in is not resolved in his/her favor, the enrollee will only receive coverage for his/her prescription drugs at the lock-in pharmacy.~~

~~(c) If the enrollee attempts to fill a prescription at any pharmacy other than his/her lock-in pharmacy, the PBM will deny coverage for the prescription and the enrollee will be entitled to notice and appeal rights as described in rule 1200-13-13-.11.~~

~~(d) The MCC shall monitor and evaluate the TennCare enrollee subject to the lock-in in accordance with the criteria identified in paragraph (2) above.~~

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-146.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 08/27/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/11/13

Rulemaking Hearing(s) Conducted on: (add more dates). 08/08/13

Date: 8/27/2013

Signature:

Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare
Tennessee Department of Finance and Administration

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 8/27/13

Notary Public Signature:

My commission expires on: AUG 28 2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

10-1-13
Date

Department of State Use Only

Filed with the Department of State on: 10/3/13

Effective on: 1/1/14

Tre Hargett
Secretary of State

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2013 OCT -3 PM 2:38

G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION:	Tennessee Department of Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Standard: Pharmacy Lock-in Program Requirements
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105; 71-5-109 and 71-5-146
EFFECTIVE DATES:	January 1, 2014 through June 30, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule expands the TennCare Standard pharmacy lock-in requirements to address member abuse or overutilization of the TennCare pharmacy program. The rule identifies activities and indicators of abuse or overutilization. The rule also establishes program procedures, including procedures regarding enrollment, provider selection, status reviews and emergency pharmacy services.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments on these rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The rules are not anticipated to have an effect on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

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For Department of State Use Only

Sequence Number: 10-04-13
Rule ID(s): 5587
File Date: 10/3/13
Effective Date: 1/1/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Revision Type (check all that apply):

X Amendments
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.01	Definitions
1200-13-14-.13	Members Abuse and Overutilization of the TennCare Program

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

The Table of Contents of Rule Chapter 1200-13-14 TennCare Standard is amended by deleting the Title of Rule Number 1200-13-14-.13 Members Abuse and Overutilization of the TennCare Program from the Table of Contents in its entirety and replacing the Rule Title in the Table of Contents as follows:

1200-13-14-.13 Member Abuse or ~~and~~ Overutilization of the TennCare Pharmacy Program.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-146.

Rule 1200-13-14-.01 Definitions is amended by deleting Paragraph (71) Lock-In Provider and replacing it with amended Paragraph (71) Lock-In Provider as follows:

(71) Lock-In Provider. A provider, pharmacy or physician, chosen by an enrollee on pharmacy lock-in status to whom the enrollee is assigned by TennCare for the purpose of receiving covered pharmacy services.

~~(71) Lock-In Provider shall mean a provider, either pharmacy or physician, who an enrollee on pharmacy lock-in status has chosen and to whom an enrollee is assigned by TennCare or the MCO for purposes of receiving covered pharmacy services.~~

Rule 1200-13-14-.01 Definitions is amended by deleting Paragraph (72) Lock-In Status and replacing it with amended Paragraph (72) Lock-In Status as follows:

(72) Lock-In Status. The restriction of an enrollee to a specified physician, or to a specified pharmacy provider at a specified single location.

~~(72) Lock-In Status shall mean the restriction of an enrollee to a specified and limited number of pharmacy providers.~~

Rule 1200-13-14-.01 Definitions is amended by deleting the word "provide" from current Paragraph (97) PBM (Pharmacy Benefits Manager) and replacing it with the word "administer" so that as amended Paragraph (97) PBM (Pharmacy Benefits Manager) reads as follows:

(97) PBM (Pharmacy Benefits Manager) shall mean an organization approved by the Tennessee Department of Finance and Administration to administer ~~provide~~ pharmacy benefits to enrollees to the extent such services are covered by the TennCare Program. A PBM may have a signed TennCare Contractor Risk Agreement with the State, or may be a subcontractor to an MCO.

Rule 1200-13-14-.01 Definitions is amended by inserting alphabetically the following new Paragraphs and numbering all definitions appropriately:

( ) Controlled Substance. A drug, substance, or immediate precursor identified by the U.S. Department of Justice, Drug Enforcement Administration or by the Tennessee Drug Control Act as having the potential for abuse and the likelihood of physical or psychological dependence if used incorrectly.

( ) Prescriber. An individual authorized by law to prescribe drugs.

( ) Targeted Pharmacy. A pharmacy meeting one of the following criteria:

(a) It is located outside the State of Tennessee.

(b) It has had previous controlled substance violations with the Tennessee State Board of Pharmacy.

(c) It appears to be an outlier to the norm in its dispensing of controlled substances.

(d) It has filled controlled substance prescriptions that are covered by TennCare for members locked in to a different pharmacy after being notified that the member was locked in to a different pharmacy.

( ) Targeted Prescriber. A prescriber with prescribing authority who is ranked as a top prescriber of controlled substances based on multiple factors which may include but are not limited to any of the following:

(a) The percentage of controlled substances prescribed.

(b) The percentage of Schedule II controlled substances prescribed.

(c) The percentage of Schedule III controlled substances prescribed.

(d) The percentage of short acting single ingredient opiates prescribed.

(e) The percentage of short acting combination product opiates prescribed.

(f) The percentage of long acting opiates prescribed.

(g) The average morphine equivalents per day prescribed.

(h) The percentage of rejected claims of controlled substances.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-146.

Rule 1200-13-14-.13 "Members Abuse and Overutilization of the TennCare Program" is deleted in its entirety and replaced with the following:

1200-13-14-.13 Member Abuse or Overutilization of the TennCare Pharmacy Program.

(1) The Bureau is authorized to implement and maintain a pharmacy lock-in program designed to address member abuse or overutilization. Activities which may indicate abuse or overutilization justifying placement on lock-in or prior approval status include but are not limited to the following:

(a) Forging or altering a prescription for drugs.

(b) Selling TennCare paid prescription drugs.

(c) Failing to control pharmacy overutilization activity while on lock-in status.

(d) Visiting multiple prescribers or pharmacies to obtain controlled substances.

(e) Trading, swapping or selling a TennCare card.

(f) Failing to promptly report the loss or theft of a TennCare card.

(g) Forging or altering a TennCare card.

(h) Knowingly providing false, incomplete, inaccurate or erroneous information to provider(s) in order to receive covered services for which the member is eligible.

(i) Permitting the use of a TennCare card by anyone other than the member to whom the card is assigned in order to receive or attempt to receive services.

(2) The TennCare pharmacy lock-in program shall be administered by the Bureau. Monitoring of enrollee activities listed in Paragraph (1) shall be conducted by the Bureau, the MCCs, including the PBM, and the TennCare Office of Inspector General (OIG). When an enrollee has been identified as having participated in any abuse or overutilization activities, including but not limited to the activities listed in Paragraph (1), the enrollee's name shall be referred to the Bureau as appropriate or potentially appropriate for the lock-in program as follows:

(a) Appropriate for the lock-in program:

1. Any enrollee who has been identified by the OIG as having been convicted of TennCare fraud or a drug-related offense.

2. Any enrollee who has used buprenorphine/naloxone (Suboxone®) or buprenorphine (Subutex®) for office based opioid addiction treatment within the previous six (6) months.

(b) Potentially appropriate for the lock-in program:

1. Any enrollee who has been arrested for TennCare fraud.

2. Any enrollee who has been arrested for a drug-related offense.

3. Any enrollee who has obtained multiple controlled substance prescriptions over a 90-day period that meet one of the following conditions:

(i) The prescriptions were filled at three (3) or more pharmacies and written by three (3) or more prescribers.

(ii) The prescriptions were filled at one (1) or more targeted pharmacies and written by two (2) or more prescribers.

(iii) The prescriptions were filled at two (2) or more targeted pharmacies and written by one (1) or more prescribers.

(iv) The prescriptions were filled at one (1) or more targeted pharmacies and written by one (1) or more targeted prescribers.

(v) The prescriptions were filled at two (2) or more pharmacies and written during three (3) or more emergency room visits.

(3) Pharmacy lock-in procedures shall include:

(a) A determination to place an enrollee who has been referred as appropriate or potentially appropriate for the lock-in program on lock-in status shall be made by the TennCare Pharmacy Director or designee after the enrollee's relevant pharmacy claims data has been reviewed by clinical staff.

(b) Any enrollee determined to be appropriate for the lock-in program shall be notified by the Bureau or the MCC prior to the imposition of lock-in status. The notice shall include a brief explanation of the lock-in program, the reason for the determination to place the enrollee on lock-in status, the date the lock-in will become effective, and the information necessary for the enrollee to appeal the decision of the Bureau, pursuant to Rule 1200-13-13-.11.

(c) If an enrollee fails to appeal placement in the lock-in program or an appeal is not resolved in his favor, the enrollee will be provided TennCare pharmacy services only at the lock-in provider to which the enrollee is assigned.

(4) Lock-in provider selection. A pharmacy will qualify for and may be selected by the enrollee as a lock-in provider only if it meets all the following criteria:

(a) It is enrolled in the TennCare Pharmacy Network;

(b) It is within the State of Tennessee;

(c) It is a full-service pharmacy that carries all medications normally carried by pharmacies;

(d) It is not a mail order or specialty pharmacy;

(e) It is not a targeted pharmacy;

(f) It is a single pharmacy location at a specific address. A chain pharmacy may be selected but only the specific named location may be used, not multiple locations or outlets of the chain; and

(g) It is in proximity to the enrollee's residence, which must be the current address on file with the

Bureau.

(5) After twelve (12) months a member may request a change of lock-in provider once each year. Additional changes are limited to the following reasons:

(a) The member has moved and his new address is at least fifteen (15) miles from the lock-in pharmacy and he has updated his address with the Bureau.

(b) The member's lock-in pharmacy has permanently closed.

(c) The member's lock-in pharmacy has voluntarily dismissed the enrollee from its practice and has notified the Bureau and the PBM.

(d) The Bureau may, at its sole discretion, determine that there is a compelling need to change the member's lock-in pharmacy.

(6) Review of lock-in status. The Bureau or the MCC shall periodically review the claims information of members on lock-in status to determine the need for continued lock-in or escalation to prior approval status.

(a) Lock-in status will be discontinued if the Bureau determines that a member has met all of the following criteria for at least six (6) consecutive months:

1. Has not paid cash for any controlled substance prescriptions covered by TennCare.

2. Has not received any narcotic medications while on buprenorphine or buprenorphine/naloxone for addiction.

3. Has received TennCare reimbursed controlled substance prescriptions from only one (1) provider.

4. Has received TennCare reimbursed prescriptions from only one (1) pharmacy.

(b) If a member is removed from lock-in status, the Bureau or the MCC will monitor the member for changes in utilization patterns and return him to lock-in status if appropriate.

(7) Prior approval status.

(a) A member against whom criminal process alleging TennCare fraud has been issued or who has been convicted of TennCare fraud shall automatically be placed on prior approval status.

(b) Lock-in status shall be escalated to prior approval status if a member on lock-in status meets three (3) of the following criteria over a 90 day period:

1. Has paid cash for three (3) or more controlled substance prescriptions covered by TennCare.

2. Has filled prescriptions for controlled substances at two (2) or more pharmacies.

3. Has received controlled substance prescriptions from two (2) or more prescribers.

4. Has received a narcotic prescription while receiving buprenorphine or buprenorphine/naloxone for addiction.

(c) A member who has been treated in a hospital emergency department for an overdose of a controlled substance (as identified in the most recently available TennCare data) or an illicit substance identified by toxicology shall automatically be placed on prior approval status.

(8) Emergency pharmacy services may be obtained with a TennCare or MCC override of a member's lock-in status. The PBM has clinical staff available at all times to respond to emergency situations. The PBM must verify that a genuine emergency exists, such as documented proof from the lock-in pharmacy that it is temporarily out of stock of a needed medication. A lock-in override will not be provided simply because a pharmacy is closed for the day unless a true medical emergency exists.

~~1200-13-14-.13 Members Abuse and Overutilization of the TennCare Program.~~

~~(1) The TennCare Bureau and the MCCs shall possess the authority to restrict or lock-in TennCare enrollees to a specified and limited number of pharmacy providers if the TennCare Bureau or the MCCs has determined that the enrollee has abused the TennCare Pharmacy Program. Such abuse includes, but shall not be limited to the following:~~

~~(a) Forging or altering prescription drugs;~~

~~(b) Selling TennCare paid prescription drugs;~~

~~(c) Filing to control pharmacy overutilization activity while on lock-in status; or~~

~~(d) Visiting multiple prescribers or pharmacies to obtain controlled substances.~~

~~(2) All pharmacy lock-in programs established by the TennCare Bureau or the MCCs must contain at least the following elements:~~

~~(a) Criteria for selection of abusive or overutilizing enrollees – Pharmacy lock-in program must demonstrate, in detail, how the program will identify lock-in candidates.~~

~~(b) Methods of evaluation of potential lock-in candidates - Pharmacy lock-in programs must describe how the program will review lock-in candidates to ensure appropriate patterns of health care utilization are not misconstrued as abusive or overutilization.~~

~~(c) Lock-in status - Pharmacy lock-in programs must describe the exact process used to notify the lock-in enrollee, notify the lock-in pharmacy and physician providers, coordinate the lock-in activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.~~

~~(d) Prior approval status - Pharmacy lock-in programs may include placing an enrollee in a prior approval status in which some or all prescriptions such as controlled substances, require prior authorization. The program must describe the exact process used to notify the enrollee of prior approval status, notify the pharmacy of the enrollee's prior approval status, coordinate the prior approval status activities with the appropriate case managers, when appropriate, and continually review the enrollee's utilization patterns.~~

~~(e) Emergency Services - Pharmacy lock-in programs must describe, in detail, how pharmacy services will be delivered to enrollees on lock-in or prior approval status in the event of an emergency.~~

~~(3) Pharmacy lock-in program procedures shall include:~~

~~(a) Prior to imposing lock-in status upon a TennCare enrollee, the TennCare Bureau or the MCC shall provide appropriate notice to TennCare enrollees, informing enrollees that they may only use one pharmacy provider and of their right to appeal this action.~~

~~(b) If the enrollee fails to appeal this lock-in or the appeal of the lock-in is not resolved in his/her favor, the enrollee will only receive coverage for his/her prescription drugs at the lock-in pharmacy.~~

~~(c) If the enrollee attempts to fill a prescription at any pharmacy other than his/her lock-in pharmacy, the PBM will deny coverage for the prescription and the enrollee will be entitled to notice and appeal rights as described in rule 1200-13-14-.11.~~

~~(d) The MCC shall monitor and evaluate the TennCare enrollee subject to the lock-in in accordance with the criteria identified in paragraph (2) above.~~

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105, 71-5-109 and 71-5-146.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 08/27/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/11/13

Rulemaking Hearing(s) Conducted on: (add more dates). 08/08/13

Date: 8/27/2013

Signature:

Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare
Tennessee Department of Finance and Administration

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 8/27/13

Notary Public Signature: Cheryl D Kline

My commission expires on: AUG 23 2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

10-1-13
Date

Department of State Use Only

Filed with the Department of State on: 10/3/13

Effective on: 1/1/14

Tre Hargett
Secretary of State

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