

Policy Number 2013-005
Central Procurement Office
Certification of Goods and Services Recommended by the Central Nonprofit Agency or
TRICOR
Policy and Procedures

Effective: May 28 2013

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

1. Purpose.

To establish Certification procedures related to TRICOR, CMRA, Certification of Products, Reevaluation of a Certified Product or Service, Decertification, Certified Service Change, Product Design or Composition Change, Certified Product or service Price Increase/Decrease for commodities and services that have been recommended by a Tennessee Central Nonprofit Agency or TRICOR as suitable for procurement by state entities.

2. Scope.

These policies and procedures apply to all procurements, contract awards, and amendments to such awarded contracts related to a certified good or service provided by a Tennessee Central Nonprofit Agency or TRICOR.

3. Definitions.

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

“Advisory Committee” – means the committee established pursuant to Tenn. Code Ann. Sec. 71-4-703.

“Certification” – means the process by which goods or services are certified by the Procurement Commission. A certification shall expire after three hundred sixty-five (365) days.

“Certification Committee”- means the committee established by Title 41, Chapter 22, Part 119 (c), Tennessee Code Annotated.

“Certification”- means the formal determination by the Procurement Commission that a given commodity or service is certified by the Procurement Commission Staff as being of satisfactory quality, reasonable in price, and commercially available.

“Certification Term” – means the one (1) year term following the effective date of a Certification.

“CMRA”- Community Rehabilitation Agencies of Tennessee- the central nonprofit agency designated by the advisory committee for purchase from the blind and other severely disabled, created by Title 71, Chapter 4, Part 703, Tennessee Code Annotated)

“Effective Date of Certification” – means the date on which Procurement Commission staff has determined to be the effective date of any approved certification of goods or services.

“Fair Market Value” means a price for goods or services at which buyers and sellers with a reasonable knowledge of all pertinent facts, and not acting under any compulsion to buy or sell, are willing to transact business.

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

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

“Procurement Commission Staff” means the staff under the supervisory control of the Chief Procurement Officer.

“Tennessee Central Nonprofit Agency” – means the agency designated by the Committee to facilitate the distribution, by direct allocation, subcontract or any other means, of orders from state government for commodities and services on the procurement list among work centers for the blind and agencies serving individuals with severe disabilities.

“TRICOR”- Tennessee Rehabilitative Initiative in Correction- produces, assembles or manufactures products with the labor of convicts confined within institutions or elsewhere employed within the State.

“Work Center” – shall have the meaning set forth in Tenn. Code Ann. § 71-4-702(8).

4. Policy and Procedure - Committee.

4.1. Procedure.

TRICOR and CMRA may request of the Procurement Commission certify certain goods or services. The Committee advises the Procurement Commission regarding the "Certification" of articles and services.

Pursuant to TCA §§ 41-22-119, *et seq.*, and 71-4-701 *et seq.*, all departments, institutions, agencies, and political subdivisions of this state, which are supported in whole or in part by the state, shall purchase all needed commodities or services from the Tennessee Rehabilitative Initiative in Correction (TRICOR) or from nonprofit work centers for the blind or agencies serving individuals with severe disabilities, provided, that such services or articles are certified by the Procurement Commission in accordance

with this Procedure. While, the procurement of certified articles or services are not subject to competitive requirements, certified articles and services must nonetheless be competitive with available goods or services generally available in the market place in terms of price and quality.

4.2. *Establishment of Policies and Procedures.*

The Committee may establish certain policies and procedures, as approved by the Procurement Commission, or for the effective implementation of the certification program. Revisions to this policy shall be submitted to the Procurement Commission for approval.

4.3. *Membership.*

The Committee shall be comprised of a representative from the TRICOR board (voting member), CMRA of Tennessee (ex-officio only), the Departments of General Services and Finance and Administration, and the Office of the Comptroller of the Treasury as follows:

- Finance and Administration- Voting Member
- Comptroller- Voting Member
- General Services- Voting Member
- TRICOR- Voting Member
- CMRA- Ex-Officio Member

The representative from The Department of Finance and Administration shall serve as the Committee Chairperson, who will have the following duties:

- To preside at all meetings of the Committee;
- To insure that the functions of the Committee as described in legislation and regulations are carried out;
- To promote the Committee's continuous cooperative working relationship with state government and political subdivisions;
- To serve as official spokesperson for the Committee in all activities for which the Committee may deem necessary; and
- To provide direction, support, and guidance to the nonprofit work centers in interpreting or fulfilling Committee activities.

The representative from the Office of the Comptroller of the Treasury shall serve as the committee Vice-Chairperson.

The representative from the Department of General Services shall serve as the Committee Secretary, who will have the following duties:

- Schedule monthly Committee meetings;
- Follow-up and coordinate TRICOR and CMRA agenda items for Committee

- meetings; and
- Record, prepare, and submit Committee meeting minutes and product or service request recommendations and rejections, along with supporting data submitted by TRICOR and CMRA for review and approval by the Procurement Commission Staff.

5. TRICOR.

5.1. Generally.

Products that are produced, assembled or manufactured by TRICOR with the labor of convicts confined within institutions or elsewhere employed within the State shall be considered for Certification.

5.2. Establishment of Policies and Procedures.

TRICOR, at its expense, will defend any suit that may be brought against the State to the extent that the suit is based on a claim that the goods certified by the Procurement Commission and purchased by State agencies infringes on a United States patent. TRICOR shall pay those costs and damages that are attributable to infringement claims and finally awarded against the State.

By January 1 of each year, TRICOR shall submit to Procurement Commission Staff, as recommended by the Committee, a preliminary listing of products on which TRICOR seeks certification. The Committee will utilize the preliminary list for the Committee's background review of products on which TRICOR seeks certification.

The Committee will make recommendations based upon one or more of its findings to Procurement Commission Staff. No products shall be certified until approved by the Procurement Commission Staff for recommendation to the Procurement Commission.

The Committee may, when it deems appropriate, contact persons and agencies independent of TRICOR in order to gather information concerning the price, quality and availability of the products proposed for certification.

The Committee shall meet at least once a month, or as needed, to evaluate the products upon which a formal request for product certification has been made by TRICOR. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Committee by TRICOR.

Each certified product shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the end of the Certification Term to determine if the product should either continue to be certified or be recommended for decertification.

The price of a product formally requested to be certified by TRICOR shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

6. CMRA.

6.1. Generally.

The purpose of this program as set forth in Title 71, Chapter 4, Part 7, Tennessee Code Annotated, is to achieve employment of the blind, deaf, mentally disabled and severely disabled persons by assuring and expanding the market for such persons' products or services. Products or services that are produced, assembled or manufactured and provided by CMRA by subcontracting with State certified non-profit agencies, who employ the blind, deaf, mentally disabled and severely disabled, shall be considered for Certification.

6.2. Establishment of Policies and Procedures.

In accordance with Title 71, Chapter 4, Part 7 of the Tennessee Code, as amended, the price of a product or service formally requested to be certified by CMRA shall be based upon the fair market value of the product or service.

The Committee will make recommendations based upon its finding(s) to the Procurement Commission Staff. No products or services shall be certified until approved by the Procurement Commission Staff.

The Committee may, when it deems appropriate, contact persons and agencies independent of CMRA in order to gather information concerning the price, quality and availability of the products or services proposed for Certification.

The Committee shall meet at least once a month, or as needed, to evaluate the products or services upon which a formal request for product or service certification has been made by CMRA. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Committee by CMRA.

Each certified product or service shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the end of the Certification Term to determine if the product or service should either continue to be certified or be recommended for decertification.

The price of a product formally requested to be certified by CMRA shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of

providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

7. Certification of Products.

7.1. Formal Request.

TRICOR and CMRA shall submit to the Committee formal requests for product and service Certifications along with supporting data regarding quality, price and availability. The following is required for each product and service submitted for Certification:

- Product or service name
- General description of product or service
- Current or proposed Edison item number
- An identification of the agencies that would benefit from TRICOR's or CMRA's product or service offering
- Packaging of the product
- Additional information, if requested by the Committee

The following documentation is required, if applicable, for each product or service submitted in order for the Committee to review the quality of the product or service offered:

- Product or service specifications
- Materials or chemical composition and the approximate amount of usage of each for unit of production
- Product warranties (e.g., warranty against defects; warranty as to fitness for purpose)
- Description of inspection program
- Description of quality control program
- Production time
- Description of assembly or mix process
- Independent laboratory evaluation, as may be requested by the Committee
- Additional information, as may be requested by the Committee
- Submit product sample, as may be requested by the Committee

The following documentation is required, if applicable, for each product or service submitted in order to review the price of the product or service:

- Unit of measurement
- Unit price
- Breakdown of unit price by cost of supplies, labor, factory overhead, and profit, if applicable
- Supply copies of invoices to support the cost of supplies, and calculations of any factory overhead or profit applied, if requested by the Committee
- Costs associated with delivery and any other associated delivery costs, and who

- will be responsible for payment
- Estimated annual sales volume based upon price
- Minimum order quantities
- Volume or any other discounts offered for the purchase of the product or service
- Supply pricing on at least three (3) comparable products or services from three different companies, if possible. If it is not possible to supply pricing for at least three (3) comparable products or services from three (3) different companies, a memorandum must be supplied justifying why it is impossible to obtain at least three (3) comparable prices. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified. The cost of comparable products should take into account volume discounts and other pricing structures used in private industry. The price of comparable products should be F.O.B. destination, unless otherwise stipulated.
- Any other special requirements or terms and conditions

The following documentation is required, if applicable, for each product or service submitted in order to review the availability of the product or service:

- Description of the delivery terms, including, but not limited to: destinations to which TRICOR or CMRA will not deliver and the means of delivery
- Delivery time (from point the order is received until reaching delivery destination)
- Description of Return Goods Policy
- Specific conditions under which a restocking charge will be levied and how much that charge will be
- A survey of three (3) companies from which comparable prices were obtained to determine the time in which the private sector could supply comparable products to the State. The survey should take into account the quantity ordered and the complexity of the product or service.

7.2. *Committee Review.*

7.2.1. *Quality, Price, Availability.*

Committee review will be based upon, but not be limited to, the documentation required to be submitted to the Committee. If requested by the Committee, TRICOR or CMRA will submit, as part of its quality report, an independent laboratory evaluation of a given certified product. The program for evaluation will include a product comparison chart that establishes brands or models manufactured by the private sector, which are comparable to the products submitted by TRICOR or CMRA for Certification. The review will involve a determination as to whether the quality is satisfactory or meets the State's standards for quality.

The Committee will review the price of the three (3) comparable products. If TRICOR's or CMRA's price is higher than comparable products or services, the Committee will require documentation of costs. The Committee will determine whether the TRICOR or CMRA pricing is at fair market value based on the documentation provided by TRICOR or CMRA or such other information as may be available relating to price or quality of the good or service for which certification is sought.

The survey conducted by TRICOR or CMRA will be used to compare the delivery time of TRICOR or CMRA in order to determine if the product can be supplied within a reasonable time frame. The Committee review will also be based upon other documentation required to be submitted to the Committee per the Formal Request Section.

7.2.2. Committee Recommendation to the Procurement Commission Staff Form of Recommendation.

The Committee's recommendation to certify or not certify the product or service will be submitted at least monthly to Procurement Commission Staff and documented in the Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR or CMRA shall be used to support the Committee's review of price, quality and availability.

7.2.3. Recommendation Not to Certify.

If the Committee recommends against certifying a certain product or service, the Committee's recommendation shall be reported and based upon one or more of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services and the costs of the work center in supplying the product or service.
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

7.2.4. Approval for Certification.

Procurement Commission Staff approval is required to certify a product or service.

7.2.5. *Effective Date of Certification.*

The effective date of a product or service approved for Certification will be the date as determined by Procurement Commission Staff, which will be reported to the Procurement Commission and entered into the Edison System.

8. Reevaluation of a Certified Product or Service.

8.1. *Review of a Certified Product or Service by the Committee.*

Each certified product or service shall be reevaluated by the Committee beginning approximately sixty (60) days prior to the ending date of the Certification Term in order to determine if the product or service should either continue to be certified or not certified by the Committee to Procurement Commission Staff. The following documentation is required for each product or service being reevaluated in order to perform the end of Certification term review:

8.2. *Price.*

TRICOR or CMRA shall conduct a survey of three (3) original vendors, if possible, who were contacted for comparison of prices for Certification to determine:

- Current price for comparison to the Certification products or service price.
- If there have been any changes in the product or service since the original comparison which would account for changes in price.
- If there has been any change in market conditions or technology.

If it is not possible to supply information noted above concerning pricing from the three (3) original vendors or from at least three (3) vendors who produce the same or similar product or service, a memorandum must be supplied to the Committee justifying why it is impossible. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified.

8.3. *Quality and Availability.*

The following shall be obtained for reevaluation of the certified product or service under review:

- The Complaint to Vendor file shall be obtained from the Department of General Services for review by the Committee.
- A current production model shall be supplied to the Committee by TRICOR or CMRA to determine if the same or better quality or production standards are being

maintained.

- A list of the number of orders placed or the dollar volume of sales during the current Certification term shall be supplied by TRICOR or CMRA to the Committee.

8.4. *Committee Recommendation.*

8.4.1. *Form of the Recommendation.*

The Committee's recommendation to certify or not certify the product or service will be submitted monthly to the Procurement Commission Staff and documented in the Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison of private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR and CMRA shall be used to support the Committee's review of price, quality and availability.

8.4.2. *Recommendation Not to Recertify.*

If the recommendation from the Committee is to not continue Certification of the product or service, the cause for not recommending shall be based upon any of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services and the costs of the work center in supplying the product or service.
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

8.4.3. *Approval for Recertification.*

Procurement Commission Staff approval is required for recertification upon reevaluation of the certified product or service with reporting of such approval to the Commission.

9. **Decertification.**

9.1. *Conditions for Decertification.*

Products or services which have been previously certified by Procurement Commission Staff are subject to decertification when one of the following conditions exists:

- A sufficient number of complaints are issued by an agency relating to the

- unavailability or poor quality of the products or services at issue.
- Design modifications or changes in material were made by TRICOR or CMRA that diminish the quality of the product.
- Price increases are requested by TRICOR or CMRA that are not supported by the work center's costs, and are beyond the current fair market price for comparable products or services.
- By request of TRICOR or CMRA upon supplying reasonable justification for decertification.
- Submission of sufficient criteria for not recommending recertification during the reevaluation process.

9.2. *Committee Recommendation.*

The Committee will make recommendations regarding decertification to Procurement Commission Staff based upon at least one of the conditions listed in the Decertification Section.

9.3. *Approval of Decertification.*

Procurement Commission Staff approval is required to remove a product from the certified products catalog or to decertify a service. Any products or services that are decertified by Procurement Commission Staff will be reported to the Procurement Commission.

10. Changes to Certified Goods or Services.

10.1. *Requests to Change Certification for Goods or Services.*

All requests for any design, composition, or other significant changes or modification to any product or service that has been certified must be submitted in writing by TRICOR or CMRA to the Committee within sixty (60) days prior to the scheduled change or modification as an addendum.

10.2. *Documentation Required for Approval.*

TRICOR or CMRA must also submit the following together with its request for a change:

- Complete documentation of the nature of the change or modification.
- The reason for the change or modification.
- Any changes in price, quality or availability information submitted with the original request for Certification.
- A list or primary customers of the certified product to be changed.

10.3. *Committee Review of Change.*

The Committee will review the change in the product or service to determine if the change has affected the quality, price or availability as currently certified.

10.4. *Causes for Rejection of Change.*

If any one of the following occurs, it will be cause for not recommending a change in the product or service:

- The price change is not supported by the Work Center's costs and is beyond the current fair market value price for comparable goods or services.
- The quality of the product or service has been lessened and is no longer satisfactory or no longer meets the State's quality standards.
- The good or service can no longer be supplied within a reasonable time frame.

10.5. *Committee Recommendation.*

The Committee will make recommendations regarding acceptance or rejection of a change to a certified good or service to Procurement Commission Staff based upon information supplied as required in Policy and Procedure- Certified Service Change, Product Design, or Composition Change section.

10.6. *Approval of Change.*

Procurement Commission Staff approval is required for a design, composition, or other significant changes or modifications to any product from the certified products catalog or certified service and shall be reported to the Procurement Commission.

10.7. *Disapproval of Change to a Certified Product or Service.*

If the Procurement Commission Staff disapproves the modification, TRICOR or CMRA has the option of continuing with the currently certified product or service, or modifying the product or service and being subject to decertification.

11. Policy and Procedure - Certified Product or Service Price Increase or Decrease.

11.1. *Conditions for Price Increase or Decrease for Certified Product or Service Firm Price Period.*

Prices for goods or services certified by Procurement Commission Staff shall remain firm for the Certification Term or any remainder of the Certification Term after a price increase or decrease is approved by Procurement Commission Staff.

11.2. *Request for Price Increase.*

A request for a price increase of a certified product shall be submitted in writing by

TRICOR or CMRA to the Committee. TRICOR or CMRA must also submit sufficient documentation to justify the increased price.

11.3. *Documentation Required for a Price Increase.*

The following must be submitted by TRICOR or CMRA to the Committee as documentation to justify the increase in price:

- The cost of raw material, labor, overhead and any profit before the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- The cost of raw material, labor, overhead and any profit after the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- Any other information, upon request of the Committee.

11.4. *Committee Review of the Request.*

The Committee shall conduct a survey of private industry, and such other documentation supplied by TRICOR or CMRA, to determine the cost of comparable products or services to which the Committee's review of the price increase will be compared for reasonableness and meeting the fair market price criteria for TRICOR or CMRA.

11.5. *Committee Recommendation of Price Increase.*

The Committee will make recommendations regarding acceptance or rejection of a price increase to Procurement Commission Staff based upon whether the price increase is supported by the work center's costs and whether those cost are reasonable and meet the fair market criteria for TRICOR or CMRA.

11.6. *Approval of Pricing Change.*

Procurement Commission Staff approval is required for a price increase to any product or service from the certified product's catalog or certified service, and such approval shall be reported to the Procurement Commission.

11.7. *Effective Date of Price Increase.*

Price increases, when approved, will be effective on the first day of the following month. No increase shall be effective until approved by the Procurement Commission Staff. Approval of any price increase will remain in effect for the remainder of the Certification Term. Price increases for products or services will be entered into Edison.

11.8. *Price Increase Rejection.*

When the Procurement Commission Staff rejects a request for a price increase, TRICOR and CMRA will be notified of the Procurement Commission Staff's decision prior to the first of the following month. TRICOR or CMRA has the option of continuing with the current price or modifying the price and being subject to decertification.

11.9. *Certified Product or Service Price Decrease, Notice of Price Decrease,*

TRICOR or CMRA shall report to Procurement Commission Staff price decreases of certified products or services immediately upon receipt or realization of the decrease, and the price shall be proportionately reduced based upon the decrease.

11.10. *Effective Date of Price Decreases.*

Price decreases will be effective on the first day of the following month upon receipt of notice, and will be updated in Edison.

Related Statutes, Rules and Policies

TCA § 41-22-118

TCA § 41-22-119

TCA § 41-22-120

TCA § 41-22-122

TCA § 41-22-124

TCA § 71-4-701

TCA § 71-4-702

TCA § 71-4-703

TCA § 71-4-704

TCA § 71-4-705