



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

AGENDA
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #003
WEDNESDAY, MARCH 28, 2012 – 1:00 PM
TN TOWER – 3RD FLOOR - CHEATHAM ROOM

- I. Proposed Communications and Negotiations policy change
- II. Update on common form for businesses to submit for procurement opportunities with government agencies
- III. Passing of proposed legislation changes
- IV. Other business

CENTRAL PROCUREMENT OFFICE

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DEPARTMENT OF GENERAL SERVICES

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MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #002
WEDNESDAY, JANUARY 18, 2012 – 1:00 P.M.
TN TOWER – 3RD FLOOR – DAVIDSON ROOM

Members in Attendance:

Jessica Robertson, Sondra Howe, Kelly Smith, Buddy Lea, Jason Mumpower, Mark Choate, Melissa Kmiecik, Matt Thompson, Jim Thompson, Hugh Holt, Jay Garrison

Members Participating by Teleconference:

Steve Hillis

Others in Attendance:

Melinda Parton, Thad Watkins, Mike Perry, Toni Stuart, Marcy Damon, James Reyes, Charlotte McKinney (State of Tennessee); Kim Adkins (Capitol Strategy Group); Cary Bush (Avaya); James White (Jones Hawkins & Farmer, PLC); Dustin Goforth (Farrar & Bates, LLP).

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

- I. Welcome and Introductions:** Jessica welcomed all members and thanked them for their attendance. She introduced Jay Garrison, Buyer/Emergency Procurement, Knox County Purchasing Division, as a new appointee to the Advisory Council. With Jay's appointment, the Advisory Council is now complete with 12 members. Jessica also introduced Hugh Holt, Purchasing Director, Knox County Government, since he was unable to attend the first meeting held in November 2011. Two new members to the Central Procurement Office leadership team were also introduced. Marcy Damon will be serving as the Director of Systems Management and James Reyes will be serving as the Director of Training and Compliance.
- II. Common form for businesses to submit for procurement opportunities with government agencies:** Jessica yielded the floor to Mike Perry, Deputy Chief Procurement Officer, to discuss this issue. Mike stated that a meeting was held with Representative Bill Dunn and Representative Harry Tindell in December 2011.

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At that meeting, they requested that the Advisory Council on State Procurement (Advisory Council) review the possibility of developing a common form for businesses to submit for procurement opportunities with government agencies. Developing a common form that any governmental agency could access would help to streamline the process for everyone. The idea was to create something similar to the Common Application that many colleges and universities accept. Mike distributed a handout that included a letter dated December 20, 2011, from Representatives Dunn and Tindell, as well as sample documents being used by Metropolitan Government of Nashville and Davidson County, Knox County, State of Tennessee, etc. (see attached). Mike asked how the Advisory Council would like to proceed with this issue and opened the floor for discussion. He stated that there might be some merit to establishing a subcommittee to review this matter.

Hugh Holt mentioned that the Knoxville Chamber Partnership (Chamber) has been trying to develop something similar to this for the past two years. He said the Chamber represents a variety of businesses that are frustrated with the different forms of registration that are required for doing business with various utility districts, cities, counties, and the State of Tennessee. He stated that they all operate under different purchasing codes and the Chamber was interested in finding some common ground that did not require code changes. Initially, the Chamber discussed establishing a new company to handle the vendor registration process and act as a clearinghouse. An annual fee would be charged to vendors for providing this service with the intent of having a single point of registration across the State. Hugh stated that the Chamber is currently “stuck in the mud” with this process after two years and not sure how to move forward.

A general discussion was held regarding the following related issues:

- Would the idea be to have vendors reapply every year and pay the fee?
- What about the liability involved if a vendor was not notified of an event?
- Even if you outsource the registration process, there is an enforcement function that must be handled by the entity.
- If a fee is paid, does that mean they have an expectation of what they will get back?
- The commodity codes must be uniform – currently some are “home grown”.
- Who has the authority to suspend or debar a vendor?
- The State currently has separate databases for vendors and bidders.
- Is the State database currently available to parties outside of the State? Per Marcy Damon it is not. The vendors/bidders would have to grant permission before their information could be released to the public.
- How do we feel about “pay to play”? Is it beneficial to local governments? Yes, if done correctly. It is worth the effort to investigate.
- Have any other state’s done something similar to this? If so, we should try to research so that we do not have to “reinvent the wheel”.

- Would the vendor's expectation be to get all requests for bids for all 90 counties?
- Could a fee be charged only if there is an award – like a percentage?
- Is this data available from any other source in State files?
- Maybe it should be done on a regional basis instead of statewide.
- What are the responsibilities of solicitors to use the database? What if they don't?
- Local agencies would probably need approval in order to participate – that could be a huge administrative process (i.e., stepping over a dollar to pick up a dime).

Jessica asked if there were any volunteers to review the pros and cons of this issue. The following Advisory Council members volunteered to serve on a subcommittee for that purpose:

1. Melissa Kmiecik
2. Hugh Holt
3. Matt Thompson

Mike Perry stated that a letter will be sent to Representatives Dunn and Tindell to provide them with an update on the Advisory Council's discussion of this issue. He also volunteered to contact NIGP to see if any other states have tried to implement this process.

Mike also advised the visitors present that he did not have enough hard copies of the handout to provide to them at the meeting but that they should let Charlotte McKinney, Executive Administrative Assistant, Central Procurement Office, know if they would like to be sent an electronic copy.

III. Proposed Legislation Changes: Jessica Robertson distributed a handout showing an explanation of proposed legislation changes (see attached). She stated that the first two changes listed (increased use of multi-step bidding and increased use of competitive negotiation as procurement methods) go together, with the goal being to streamline purchasing methods. The third proposed change (contract term flexibility) gives the flexibility for commodity contracts to exceed the current statutory limit of 60 months when approved by the Chief Procurement Officer. The fourth proposed change (threshold change for commodity and non-professional services) will empower the Central Procurement Office staff to focus on larger, high-risk contracts and it also gives user agencies more control of their contracts. The fifth change (signature authority for professional service contracts) increases the signatory threshold of professional service contracts from \$15,000 to \$50,000. Again, this will streamline the procurement and contracting process and eliminates steps that fail to add value. It also aligns the delegated purchase threshold for services with the proposed threshold for commodity procurements.

Jason Mumpower asked how these changes were packaged and Jessica indicated they are consolidated into one bill and she will keep the Advisory Council updated on progress (House Bill 2356 and Senate Bill 2218).

Thad Watkins, Legal Counsel, Department of General Services, indicated that other new bills are being introduced through mid-February that could relate to the Advisory Council. A discussion was held regarding the need for a speedy review and opinion from the Advisory Council if necessary. Thad reminded the Advisory Council of the Sunshine Law and cautioned that two or more members may not meet for the purpose of deliberating toward a decision outside of a scheduled meeting. A subcommittee could be formed that could react quickly if a meeting was needed on short notice. Jessica asked for volunteers to serve on this subcommittee and the following members agreed to serve:

1. Jason Mumpower
2. Buddy Lea
3. Mark Choate
4. Kelly Smith

Kelly Smith, Assistant Commissioner, Department of General Services, stated that she could send emails to the subcommittee and full Advisory Council about potential issues in advance. The question of public notice for subcommittee meetings was discussed. Thad indicated that “reasonable notice” must be given and that if a meeting is needed on short notice, the individual situation would dictate how long that would be.

IV. Other Business: Jason Mumpower asked if there were any procurement policies and procedures that the Advisory Council is charged to review prior to being presented to the Procurement Commission that will be effective on April 1, 2012. Jessica responded that even though the Central Procurement Office is officially established on April 1, 2012, the procurement policies and procedures may not be in place.

Minutes from November 19, 2011 Meeting: Jessica stated that the minutes from the November 9, 2011 meeting had been sent to all Advisory Council members for their review and approval. A motion was made by Mark Choate and was seconded by Kelly Smith to accept the minutes as submitted. All members voted in favor – none opposed.

Jessica stated that the next Advisory Council meeting would probably be in the spring - details will follow.

Adjournment: The meeting was adjourned at 2:10 p.m.

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

Effective: Upon passage by the Procurement Commission

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

Purpose

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

Scope

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

Definitions

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

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

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

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

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

Policy and Procedure

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

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

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

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

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

Related Rules and Policies

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

Policy .03a-11

Approval Signature

Jessica Robertson, Chief Procurement Officer

Communications and Negotiations Policy

Effective: Upon passage by the Procurement Commission
Prepared by: Tennessee Department of General Services, Central Procurement Office

Purpose

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

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

Scope

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

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

Policy and Procedure

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

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

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

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

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

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

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

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

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

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

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

Related Rules and Policies

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

Policy .03a-11 and

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

Policy and Procedures 10.2

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

Approval Signature

Jessica Robertson, Chief Procurement Officer

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



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MEMORANDUM

TO: The Advisory Council on State Procurement

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

DATE: March 20, 2012

SUBJECT: Universal Bidder/Vendor Application for Tennessee Political Subdivisions

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

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

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

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

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

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