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To: Joint Committee on Information Technology

From: Steven Wu, Fiscal Analyst

Re: Sole Source State Contracts – Information Technology Procurements

This memorandum contains a brief overview of exemptions to the standard procurement process in the State of Kansas as it relates to contracts for information technology goods and services.

COMPETITIVE PROCUREMENTS

In Kansas, the procurement and contracting process is statutorily required by K.S.A. 75-3739(a), which states that "all contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids." Competitive procurements take the form of either a Request for Quotation (RFQ), used for one-time purchases; an Invitation for Bid (IFB), used for repetitive purchases; or a Request for Proposal (RFP), used for either one-time or repetitive purchases.

NONCOMPETITIVE PROCUREMENTS

The State of Kansas also employs noncompetitive procurements—also called "sole source" or "no bid" procurements—that are exempt from the normal competitive process. Noncompetitive procurements are exceptions to the general statutory rule for requiring a competitive process when acquiring goods and services. When requesting a noncompetitive procurement, agencies must provide research and analysis establishing whether competition exists and, if it does, why it is in the best interest of the state to bypass the competitive procurement process.

The Department of Administration's Office of Procurement and Contracts (OPC) employs a prior authorization review process to facilitate review of agency requests and determine whether a procurement should be exempt from the competitive process. Under direction of *Division of Purchases Memorandum 11-03*, when submitting a purchase requisition to the Statewide Management, Accounting, and Reporting Tool (SMART), agencies must submit a separate prior authorization requisition form when the requested procurement is not on an established contract; is above the agency's delegated authority; and the competitive bidding process is not appropriate. OPC also develops and promulgates guidelines for the review

process, available at https://admin.ks.gov/offices/procurement-and-contracts/procurement-training, which details the following exemptions from the competitive procurement process:

Prior Authorization Types (Exemptions from the Competitive Procurement Process)			
Exemption	**Code**	**Statute**	**Description**
Consortium / Cooperative Purchase Agreements	CCA	75-3739(i)	Consortium or cooperative purchasing agreement with federal, agencies, agencies of other states, or local units of government.
Conference / Hotel Event	CHE	-	Organized meetings and conferences in which an outside event site is needed, and cost exceeds $5,000.
Compatible with Existing Equipment	COM	75-3739(a)(5)	Procurement where compatibility with existing equipment is the overriding concern.
Software Maintenance from Developer	CSD	75-3739(a)(5)	Procurement where compatibility with existing software is the overriding concern.
Delegated Authority Request	DAR	75-3739(e)	Authority delegated to a state agency to make purchases of less than $25,000 under prescribed conditions and procedures.
Director of Purchases Approval	DOP	75-3739(a)(7)	Noncompetitive procurement determined to be in the best interest of the state.
Emergency Procurement	EMR	75-3739(a)(3)	Agency emergency that requires immediate delivery of goods or services.
Grants / Sub-Recipients	GSR	75-3739(j)	Authority delegated for purchases funded from a grant.
Inter / Intra-Government Procurements	IGP	75-3739(h)	Procurements from other state and federal agencies, governmental entities, and nonprofit educational institutions.
Lab or Research Equipment	LRE	75-3739(a)(2)	Lab equipment that are best purchased without competition or where rates are fixed by law or ordinance.
Off-Contract Purchase Requests	OCP	-	Contracts awarded by OPC to take advantage of volume discount pricing, with recurring demand from one or more agencies.
Original Equipment Manufacturer	OEM	-	No longer used.
Only Known Provider	OKP	75-3739(a)(1)	No competition for the good or service exists.
Purchased for Evaluation Purposes	PEP	-	Products purchased for evaluation.
Patented / Copyrighted Material	PSC	-	No longer used.
Professional Services Sunshine Act	PSP	75-37,130 *et seq.*	Professional services performed under a contract with a state agency by any CPA, attorney, or consultant.
State Use Catalog Waiver	SCW	75-3322	Waiver from mandatory purchase requirements when a qualified vendor in unable to supply the good or service.
Statutorily Exempt	STX	75-3739(a)(4)	Procurement when another statute authorized a separate purchasing procedure or exemption.

Exemption	Code	Statute	Description
Purchase of Used Equipment	USE	75-3739(a)(6)	Used items available for immediate purchase.
Utilities	USR	-	Electricity, municipal water service, and municipal sewage.

When providing documentation in support of a prior authorization request, communication from a vendor claiming to be the only provider often cannot be used as the sole documentation, and relying on simple search engine research will not meet expectations. Furthermore, approval from the Kansas Information Technology Office (KITO) is required for information technology projects expected to exceed $250,000, including internal cost centers. Of the potential exemptions, the following could apply to information technology procurements:

- **Compatible with Existing Equipment (COM).** This exemption applies to procurements where compatibility with existing equipment is the overriding concern. Kansas statute recognizes that there may be times when past purchases of goods, equipment, or services may affect how future purchases for related goods and services are managed. When evaluating the marketplace, agencies seeking COM authorization must consider whether comparable goods or services with minor deviations in operational characteristics deter the agency from accomplishing the intended use or function. In FY 2018, the State of Kansas authorized 104 procurements under this exemption.

- **Software Maintenance from Developer (CSD).** This exemption applies to procurements where compatibility with existing software and where maintenance is only available from the developer is the overriding concern. This exemption is not to be applied to computer hardware or new software. Agencies seeking this prior authorization are expected to include information about whether existing software contract providers have been contacted and sufficient research on the applicability of this exception. In FY 2018, the State of Kansas authorized 114 procurements under this exemption.

- **Director of Purchases Approval (DOP).** Pursuant to K.S.A. 75-3739(a)(7), the Director of Purchases may approve of a noncompetitive contract upon reaching a determination, made with the head of the acquiring state agency and the Department of Administration, that such a contract is in the best interest of the state. OPM indicates that past use of this exemption has required the Director prepare a supporting memorandum explaining why bypassing the competitive bidding process is in the best interest of the state. In FY 2018, the State of Kansas authorized 1,203 procurements under this exemption.

- **Only Known Provider (OKP).** This exemption applies to procurements where no competition for the good or service exists. Because of the statutory requirement for competitive procurement and the reporting of any noncompetitive transactions, OPM emphasizes the importance of state agencies providing complete documentation to support their prior authorization request, including analysis of the choice to seek a noncompetitive procurement and the sourcing market for the acquisition. In FY 2018, the State of Kansas authorized 388 procurements under this exemption.

INFORMATION TECHNOLOGY PROCUREMENTS

Kansas Information Technology Executive Council (ITEC) policies outline the standards and procedures for approving information technology projects. Once in the procurement process, per K.S.A. 75-37,102, the chief administrative officer of a state agency may convene a procurement negotiating committee to obtain services or technical products. The committee is comprised of the Director of Purchases, the chief administrative officer, the Secretary of Administration, and, if the procurement involves information technologies, the Executive Chief Information Technology Officer (CITO), or their designees.

The following table provides an overview of large noncompetitive procurements involving information technology goods and services in the last five fiscal years:

Prior Authorizations – IT Procurements > $1.0 Million (FY 2014 - FY 2018)
(Excludes Contracts Between State Agencies)

Agency	Vendor	Description	Code	Amount
FY 2018				
Department of Administration	Excipio Consulting LLC	Executive Branch IT services	DOP	4,760,614
Department of Revenue	CGI Technologies LLC	10-year contract for professional services to operate, maintain, enhance, and support KDOR tax systems	COM	82,279,427
Department of Health & Environment	Global Environmental Consulting Inc.	Maintenance and support for Salt Water Solutions (SWS) software and the Safe Drinking Water Information System (SDWIS).	CSD	1,472,925
Department of Health & Environment	Oracle America Inc.	Annual license support for the Kansas Eligibility Enforcement System (KEES) and KDHE's Medicaid Management information system	DOP	12,587,153
FY 2017				
Department of Children and Families	Micropact Global Inc.	Proprietary software maintenance and support	CSD	1,085,949
FY 2016				
Department of Health & Environment	E Funds Corporation	Services for the implementation of Electronic Benefit Transactions (EBT) for the Kansas Women, Infants, and Children (WIC) Program	DOP	5,002,640
FY 2015				
Department of Revenue	Tyler Technologies	Annual support for Orion, a computer-assisted mass appraisal solution.	OKP	1,469,649
Department of Health & Environment	Mantech Advanced Systems International	Maintenance and enhancements for the Vital Statistics Integrated Information System (VSIIS).	CSD	1,588,355
FY 2014				

Agency	Vendor	Description	Code	Amount
Department of Administration	Software AG USA Inc.	Maintenance for license of proprietary software products	CSD	2,423,271
Department of Transportation	Bentley Systems Inc.	Maintenance of KDOT's computer aided drafting and design software system, MicroStation, GEOPAK, and ProjectWise	CSD	1,066,964