



December 2, 2004

MEMORANDUM TO: Directors, Fiscal Officers, and Legal Counsels of State Agencies
Whose Directors/Heads Are Appointed by the Governor

FROM: Thomas W. Johnson 
Director

SUBJECT: **Calendar Year 2005 Procedure:** Contribution Restrictions
Applicable to Your Award of a Noncompetitively Bid Contract for
the Purchase of Goods or Services Costing More than \$500.00

This memorandum outlines the Calendar Year (CY) 2005 procedure that a state agency whose director or head is appointed by the Governor shall follow to assure compliance with the contribution restrictions of Section 3517.13 (I) and (J) of the Revised Code. The agency shall follow this procedure whenever it awards a noncompetitively bid contract during CY 2005 for the purchase of goods or services costing more than \$500.00. *The CY 2005 procedure is the same as the CY 2004 procedure.*

A. Ineligibility of Vendor

A vendor may not be awarded, during CY 2005 a noncompetitively bid state contract for the purchase of goods or services costing more than \$500.00 from a state agency whose director or head is appointed by the Governor if (1) a party associated with the vendor and listed in Division (I) or (J), as applicable, of Section 3517.13 of the Revised Code (2) or the spouse of such party (3) made, as an individual, (4) within the two previous calendar years (January 1, 2003 through December 31, 2004), (5) one or more contributions totaling more than \$1,000.00 to Governor Bob Taft or to the Governor's campaign committee. Please refer to Revised Code Section 3517.13 (I) and (J) for the requirements and prohibitions that may be applicable to a particular vendor.

B. Prohibition on State Agency

State agencies whose directors or heads are appointed by the Governor are prohibited by Divisions (I) and (J) of Section 3517.13 of the Revised Code from awarding any noncompetitively bid contract for the purchase of goods or services costing more than \$500.00 to an entity listed in those Divisions if a party listed in those Divisions or the spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to Governor Bob Taft or to the Governor's campaign committee.

"More than \$500.00" means the amount of an individual contract for goods or services awarded to an entity and not the aggregate amount of contracts for goods or services awarded to an entity.

"Entity" means an individual, partnership, association, including professional association organized under Chapter 1785. of the Revised Code, estate, trust, corporation (including a not-for-profit corporation), or business trust but does NOT mean a governmental body.

"Party" means:

- For an individual referenced in Division (I): *the individual*;

- For a partnership, association, including, without limitation, a professional association organized under Chapter 1785. of the Revised Code, estate or trust referenced in Division (I): *a partner, shareholder, administrator, executor, or trustee;*
- For a corporation or business trust referenced in Division (J): *an owner of more than twenty per cent of the corporation or business trust, taking into consideration only owners for all of the two previous calendar years.*

“The two previous calendar years” means January 1, 2003, through December 31, 2004 for a contract awarded in CY 2005.

C. Calendar Year 2005 Procedure

A vendor who submits a contract proposal or seeks a noncompetitively bid contract for the purchase of goods or services costing more than \$500.00 must make an affirmative statement in the following State documents indicating compliance with the contribution restrictions specified in Divisions (I) and (J) of Section 3517.13 of the Revised Code. Additionally, OBM may ask a vendor who has previously made contributions to complete a separate contribution disclosure form.

A vendor who makes an affirmative compliance statement for CY 2005 may be awarded a noncompetitively bid contract for goods or services costing more than \$500.00 any time during CY 2005, assuming all other requirements are met. The vendor’s eligibility to be awarded a noncompetitively bid contract will not change during the calendar year because eligibility is based upon compliance during a closed period, i.e., CYs 2003 and 2004. Any contributions made in CY 2005 are not relevant to the vendor’s eligibility to be awarded a noncompetitively bid contract in CY 2005.

Contributions made in CY 2005 may affect the vendor’s eligibility to be awarded a noncompetitively bid contract in CY 2006 because eligibility in CY 2006 will be based upon compliance with contribution restrictions during CYs 2004 and 2005.

1. THE FOLLOWING STATEMENTS SHALL BE INCORPORATED INTO STATE DOCUMENTS:

All requests for proposals, proposals submitted by a vendor, written contracts, Controlling Board requests, and purchase orders for noncompetitively bid purchases costing more than \$500.00 shall include the following standard statements affirming the vendor’s compliance with the contribution restriction.

a. Requests for Proposals: Standard Language

Ohio Elections Law

A. Prohibition

State agencies whose directors or heads are appointed by the Governor are prohibited by Divisions (I) and (J) of Section 3517.13 of the Revised Code from awarding any noncompetitively bid contract for the purchase of goods or services costing more than \$500.00 to an entity listed in those Divisions if a party listed in those Divisions or the spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to the Governor’s campaign committee.

B. Individual, Partnership, Association, Estate, or Trust

A vendor that is an individual, partnership, association, including, without limitation, a professional association organized under Chapter 1785. of the Revised Code, estate, or trust shall include in its proposal an affirmative statement that, as applicable to the vendor, no such individual or spouse of such individual has made, and no partner, shareholder, administrator, executor, or trustee, or the spouses of any of them has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to the Governor's campaign committee, consistent with the restrictions of Section 3517.13 (I) of the Revised Code.

C. Corporation or Business Trust

A vendor that is a corporation or business trust, except a professional association organized under Chapter 1785. of the Revised Code, shall include in its proposal an affirmative statement that no owner of more than twenty per cent of the corporation or business trust or the spouse of such person, has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of such period, one or more contributions totaling in excess of \$1,000.00 to the Governor or to the Governor's campaign committee, consistent with the restrictions of Section 3517.13 (J) of the Revised Code.

b. Proposals and Contracts: Standard Language

Ohio Elections Law

[Name of vendor] affirms that, as applicable to the vendor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to the Governor's campaign committee.

(In the alternative the vendor shall provide the applicable affirmative statement specified in C. 1. a. above for an "Individual, Partnership, Association, Estate, or Trust" or for a "Corporation or Business Trust.")

c. Controlling Board Requests: Standard Language

Requests for proposals, proposals, and contracts attached to a Controlling Board request must contain the applicable standard language provided in C.1.a. and b. above.

d. Purchase Order: Standard Language

The following statement will automatically print onto a purchase order for any noncompetitively bid purchase of goods or services costing more than \$500.00 as the form is reproduced by an agency's printer:

By accepting this purchase order, the vendor herein named affirms that, as applicable to the vendor, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to the Governor's campaign committee.

2. THE CY 2005 PROCEDURE WILL BE IMPLEMENTED AS FOLLOWS:

The following CY 2005 procedure shall be used for each noncompetitively bid contract for the purchase of goods or services costing more than \$500.00, which is awarded during CY 2005.

- a. On December 1, 2004, OBM sent a memorandum explaining the CY 2005 procedure to state vendors who received over a twelve-month period purchase orders in excess of \$500.00, which did not reference a state term contract or a state term schedule.

A state agency shall copy and send the memorandum to a new vendor to whom the agency may award a noncompetitively bid contract for the purchase of goods or services costing more than \$500.00. An agency should routinely send the memorandum and the IRS Form W-9 to a new vendor whenever a vendor is added to the CAS vendor system.

All requests for proposals, proposals submitted by a vendor, written contracts, Controlling Board requests, and purchase orders for noncompetitively bid contracts costing more than \$500.00 shall include a standard statement affirming the vendor's compliance with the contribution restrictions.

The vendor is responsible for ascertaining whether the vendor can make the affirmative statements requested in those documents. A vendor who cannot make such statements shall not accept the award of the contract. A state agency may reasonably rely on the statements made by the vendor and is not required to verify the statements independently.

- b. OBM may ask a vendor who has previously made contributions in excess of \$1,000.00 within the two prior calendar years to complete a separate contribution disclosure statement. Agencies may access master table inquiry VBID to determine which vendors have indicated they are unable to accept a noncompetitively bid contract for the purchase of goods or services costing more than \$500.00 because their contributions exceeded \$1,000.00 within the two previous calendar years.
- c. The agency shall send a completed purchase order to a vendor immediately to document both the contract with the vendor and the encumbrance of funds sufficient for the contract.
- d. The vendor's acceptance of the purchase order, with the contribution restriction statement printed on the form, signifies the vendor's compliance with the contribution restrictions of Section 3517.13 of the Revised Code.
- e. If the vendor has questions about the inclusion of the compliance statement in a request for proposals, proposal, contract, or Controlling Board request or on the purchase order, the state agency should refer the vendor to OBM's memorandum to State of Ohio vendors explaining the CY 2005 procedure.
- f. If the vendor's representative has any questions about the vendor's contribution status, the representative should contact a superior. Additionally, the vendor may want to contact an attorney or request an advisory opinion interpreting its status on a prospective basis from the Ohio Elections Commission, at 21 West Broad Street, Suite 600, Columbus OH 43215.
- g. If the vendor either (1) cannot make the affirmative statement required in a proposal, contract, or Controlling Board request or on the purchase order or (2) does not know if the statement can be made, the agency CANNOT make the purchase from the vendor and the vendor CANNOT accept the contract award.

D. Conclusion

This memorandum notifies you of the CY 2005 procedure that a state agency whose director or head is appointed by the Governor will follow to assure compliance with the contribution restrictions applicable to the award of a noncompetitively bid contract for the purchase of goods or services costing more than \$500.00.

In the interest of expediting state business, please communicate to your purchasing and contract staff the information contained in this memorandum.

Any questions about this procedure should be directed to Elizabeth A. Scott, OBM Chief Legal Counsel, at (614) 466-4034 (telephone) or (614) 466-3813 (fax).