



MEMORANDUM

December 26, 2006

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

FROM: Timothy S. Keen,
Director

A handwritten signature in black ink that reads "Timothy S. Keen".

SUBJECT: **Calendar Year 2007 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) 2007 procedure that a state agency whose director or head is appointed by the Governor shall follow to assure compliance with the contribution restrictions under Ohio Revised Code Section 3517.13. The agency shall follow the procedure whenever it awards a noncompetitively bid contract during CY 2007 for the purchase of goods or services costing more than \$500.00. *The CY 2007 procedure is the same as the CY 2006 procedure.*

A. Ineligibility of Vendor

During CY 2007, a vendor may not be awarded a noncompetitively bid contract by a state agency or department, or by the Bureau of Workers' Compensation if the requirements outlined under Subdivision B below have not been met.

B. Prohibition on State Agency or Department, and Bureau of Workers' Compensation

a. State agency or department

Pursuant to Ohio Revised Code Section 3517.13(I), no state agency or department whose director or head is appointed by the Governor shall:

award any contract, other than one let by competitive bidding or a contract incidental to such contract or which is by force account, for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to any individual, partnership, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust if the individual has made or the individual's spouse has made, or any partner, shareholder, administrator, executor, or trustee or the spouse of any of them has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of one thousand dollars to the Governor or to the Governor's campaign committees.

And, pursuant to Ohio Revised Code Section 3517.13(J), no state agency or department whose director or head is appointed by the Governor shall:

award any contract, other than one let by competitive bidding or a contract incidental to such contract or which is by force account, for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to a corporation or business trust, except a professional association organized under Chapter 1785 of the Revised Code, if an owner of more than twenty per cent of the corporation or business trust or the spouse of that person has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of that period, one or more contributions totaling in excess of one thousand dollars to the Governor or to the Governor's campaign committees.

b. Bureau of Workers' Compensation

Pursuant to Ohio Revised Code Section 3517.13(Y), the Administrator of the Bureau of Workers' Compensation and employees of the Bureau shall not:

conduct any business with or award any contract, other than one awarded by competitive bidding, for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to any individual, partnership, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust, if the individual has made, or the individual's spouse has made, or any partner, shareholder, administrator, executor, or trustee, or the spouses of any of those individuals has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of one thousand dollars to the campaign committee of the governor or lieutenant governor or to the campaign committee of any candidate for the office of governor or lieutenant governor.

And, pursuant to Ohio Revised Code Section 3517.13(Z), the Administrator of the Bureau of Workers' Compensation and employees of the Bureau shall not:

conduct business with or award any contract, other than one awarded by competitive bidding, for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to a corporation or business trust, except a professional association organized under Chapter 1785 of the Revised Code, if an owner of more than twenty per cent of the corporation or business trust, or the spouse of the owner, 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 one thousand dollars to the campaign committee of the governor or lieutenant governor or to the campaign committee of any candidate for the office of governor or lieutenant governor.

"The two previous calendar years" means January 1, 2005 through December 31, 2006 for a contract awarded in CY 2007.

C. Calendar Year 2007 Procedure

The following CY 2007 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 2007.

1. On December 18, 2006, OBM sent a memorandum explaining the CY 2007 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.

2. All requests for proposals, proposals submitted by a vendor, written contracts, Controlling Board requests, and purchase orders for noncompetitively bid contracts of goods or services costing more than \$500.00 shall include a standard statement affirming the vendor's compliance with the contribution restrictions.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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 2007 procedure.
8. 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.
9. 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 2007 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.

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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 Mark Iannotta, OBM Chief Legal Counsel, at (614) 644-8797 (telephone) or (614) 466-3813 (fax).

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