

## TENNESSEE GOVERNMENT UPDATE

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

September 21, 2010

[Public Chapter No. 1098](#) of the Acts of 2010<sup>1</sup> ("PC 1098" or the "Act") creates a Tennessee state procurement commission, a procurement office, a chief procurement officer, a state protest committee and an advisory committee on state procurement. It removes procurement responsibility for the state of Tennessee from the commissioners of General Services and Finance and Administration and consolidates all procurement responsibility in the procurement commission, procurement office and chief procurement officer.

Currently, procurement of services (systems integration, call centers, actuaries) is the responsibility of the Commissioner of Finance and Administration and is effected by a request for proposal ("RFP") process. Purchase of goods (automobiles, office equipment and servers) is the responsibility of the Commissioner of General Services and is effected by an invitation to bid ("ITB") process.

PC 1098 establishes a procurement office led by the chief procurement officer. The chief procurement officer is to be appointed "[e]ffective March 31, 2011," and is required to be "qualified by training and relevant and recent experience in large-scale public procurement of goods and services..." PC 1098 provides for the transition of all procurement matters and all contract management responsibility from Finance and Administration and General Services to the chief procurement officer.

"Effective July 1, 2011," the chief procurement officer is required to establish "a single public Internet procurement web site" on which will be posted "all procurements and process and related status to award; and a database of established contracts by state agencies, departments and institutions" when the Act is fully effective October 1, 2011.

Subject to the approval of the state procurement commission, the chief procurement officer will have complete responsibility for state purchases and contract and grant management.

The procurement commission will be comprised of the Commissioner of General Services, the Commissioner of Finance and Administration, and the Comptroller of the Treasury (who is elected by the General Assembly). The commission is required to review all "proposed rules related to procurement" before submission to the Attorney General and Reporter pursuant to Tennessee's Uniform Administrative Procedures Act. In addition, as part of the transition,

---

<sup>1</sup> To be codified at Tenn. Code Ann. Sec. 4-56-101 *et seq.*

“within thirty (30) days following the appointment of the commission, all departments shall submit existing rules relating to procurement to the commission for the commission’s review and comment and recommendations for any changes to such rules.”

PC 1098 also creates an advisory council on state procurement with five voting members and seven non-voting members. The five voting members are: two representatives of state agencies appointed by the Commissioner of General Services, one representative appointed by the Commissioner of Finance and Administration, one representative appointed by the Comptroller of the Treasury, and the chief procurement officer. The council is to “meet at least twice each year for the discussion of problems and recommendations for improvement of the procurement process... .” However, “the council’s role shall be strictly advisory... .”

The Act does not purport to change either the ITB or RFP process. However, a protest of any procurement decision will be made first to the commissioner of the department for which the purchase is made. An appeal of the decision by that commissioner will be to the state protest committee comprised of the commissioners of General Services and Finance and Administration and the State Treasurer (who is elected by the General Assembly).

In addition, PC 1098 also creates a prior approval process for the procurement of goods and services by non-competitive or single source contract. In such cases, the request to execute a non-competitive contract and the justification for that request must be filed by the state agency or department seeking to make the purchase with the Fiscal Review Committee of the General Assembly, the Comptroller of the Treasury and the chief procurement officer. Virtually all state entities, including The University of Tennessee and Tennessee Board of Regents (Tennessee’s higher education systems), are subject to this requirement. Only contracts awarded by the Department of Transportation, and the State Building Commission and “debt issuance contracts” are not subject to the review. The Fiscal Review Committee will have 20 business days “to comment on the proposed contract” but, as a constitutional matter of separation of powers, can take no formal action.

Please do not hesitate to contact us if you would like more detailed information.

---

**J. Richard Lodge**

(615) 742-6254

[dlodge@bassberry.com](mailto:dlodge@bassberry.com)



**Erica Bell Vick**

(615) 742-7901

[evick@bassberry.com](mailto:evick@bassberry.com)

---

150 Third Avenue South, Suite 2800 • Nashville, TN 37201 • (615) 742-6200

The Tower at Peabody Place • 100 Peabody Place, Suite 900 • Memphis, TN 38103 • (901) 543-5900

1700 Riverview Tower • 900 South Gay Street • Knoxville, TN 37902 • (865) 521-6200

[bassberry.com](http://bassberry.com)