

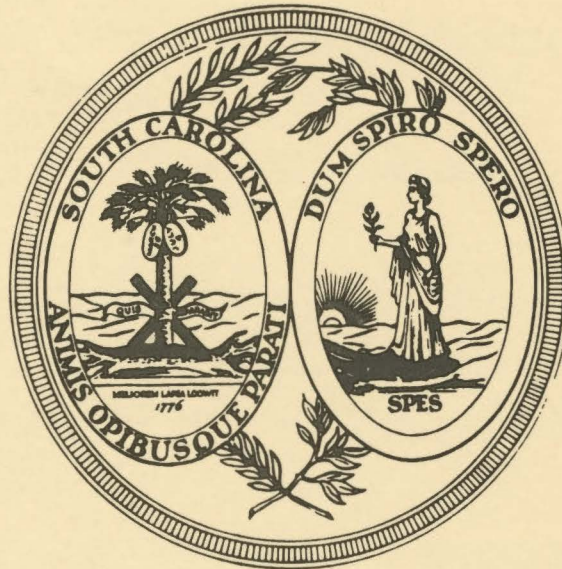
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South Carolina General Assembly



Legislative Audit Council



South Carolina General Assembly
Legislative Audit Council
A Comparison of Cost Effectiveness
Procedures Among Centralized and
Decentralized Purchasing Systems
and Public Purchasing in
South Carolina
March 25, 1981

STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

COMPARISON OF COST EFFECTIVENESS PROCEDURES

AMONG CENTRALIZED AND DECENTRALIZED

PURCHASING SYSTEMS AND

PUBLIC PURCHASING IN SOUTH CAROLINA

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
SCOPE AND METHOD.....	1
REPORT SUMMARY.....	3
CHAPTER I	4
CHAPTER II	24
 <u>APPENDICES</u>	
1 - Central State Purchasing Code of Ethics.....	45
2 - American Bar Association Model for Ethics in Public Contracting	46

INTRODUCTION

The Committee to Study State Bidding Procedures asked the Legislative Audit Council to undertake a review of commodity purchasing procedures in South Carolina and make a comparison with procedures used in other states. The Committee's focus in the request was to compare and contrast the advantages and disadvantages of centralized and decentralized commodity purchasing systems, and, if possible, identify areas for improvement in South Carolina's commodity purchasing procedures.

SCOPE AND METHOD

The audit report has two chapters. The first chapter defines and explains both a centralized purchasing system and a decentralized system and compares these definitions with South Carolina's system. The second chapter identifies areas in the State's commodity purchasing procedures where improvements can be made, or where policy issues need to be more clearly defined and resolved. The study does not address procedures for acquiring professional services such as architects, nor are procedures for capital improvements projects examined. These topics have been examined in previous Audit Council reports.

In the comparison between centralized and decentralized purchasing, the following issue areas were examined: term contracts, purchasing functions, data collection and analysis procedures, contract award procedures, bidders' lists, and training. The Audit Council reviewed recent purchasing studies conducted by other states, by the Council of

State Governments, and by the United States General Accounting Office. Twenty-five South Carolina agencies, most having their own purchasing departments, were surveyed regarding the State's purchasing procedures. Various aspects of the operation of the Central State Purchasing Office of the Division of General Services also were reviewed. In addition, Audit Council staff attended the public hearings held by the State Reorganization Commission concerning the proposed Model Procurement Code.

REPORT SUMMARY

This report presents a summary discussion of the most important and desirable features of a State procurement system. The review attempted to focus on the issue of cost effectiveness as it relates to centralization and decentralization in theory. These concepts were then related to current practices in South Carolina and other states. Certain problem areas are presented with recommendations because they seem to be an important policy issue or of a broad enough scale to warrant legislative consideration. A few additional questions of a technical nature were raised during the course of the fieldwork which are being brought to the attention of the Division of General Services for their consideration.

It is difficult to make general statements about public procurement because there are always exceptions. However, in general, South Carolina's public procurement procedures, in comparison with other states, are relatively decentralized and flexible. Although specific recommendations are in the body of this report, they all are related to the need for improved controls. The Audit Council feels that improved controls are needed due to both the relative degree of decentralization in the State's procurement system and the problem areas cited in the report.

CHAPTER ONE

Introduction: Desirable Characteristics of a State Procurement System

This chapter briefly outlines the most important and essential attributes necessary to help a State procurement system operate properly. First is a consolidated comprehensive procurement law. The other desirable features could be incorporated in the law: a statement of the State's purchasing principles, a directive to seek competitive pricing advantageous to the State at all levels of purchasing, a detailed code of conduct for purchasing officials with meaningful sanctions for violators, a central information file of purchasing data, and routine analysis of the data to help ensure that the purchasing system is operating properly. The law also should delegate adequate authority for oversight and management of the State's procurement system.

The mechanics of developing and implementing these features are complex and demanding. South Carolina's purchasing procedures possess the rudiments of most of these features in varying degree. Statutory direction from the General Assembly is needed to provide the impetus and authority for the Division of General Services to fully implement the refinement measures necessary for significant improvement in the State's procurement system. Discussions of more specific areas for improvement which can enhance purchasing cost effectiveness and analysis of cost effectiveness are presented in Chapter Two.

Defining the "Best" System for Public Purchasing

There are different approaches to establishing an ideal purchasing system for a state. The approach selected depends on the Legislature

determining and defining the primary goal of the state's purchasing system. The following comment from the General Accounting Office outlines one type of public purchasing philosophy.

The primary objective of public purchasing is to economically acquire needed goods and services of acceptable quality and to provide them to the requisitioning unit when required. Traditional auditing views purchasing's role as service oriented; however, we view purchasing as a management activity which helps government officials carry out their responsibilities. (p. 13, Checklist and Guidelines for Evaluating Local Procurement Systems. United States General Accounting Office, August, 1978.)

In contrast to this approach is the philosophy cited by the Council of State Governments in a 1979 report on procurement practices in state governments and the Federal Government.

The first obligation of the public contracting function is stewardship for the taxpayer.... In public contracting, an award--multiple as well as single--should be made only to fill a valid need, not indulge preferences. Making awards for the purpose of providing preferential choices by user agencies is not in keeping with economy and optimum value. (p. 49, Survey of Selected Procurement Practices of State Governments. November 28, 1979; Council of State Governments, Lexington, Kentucky.)

The differences among "philosophies" of public procurement may at first seem subtle and of minor importance. However, the differences in emphasis are highly significant in developing both the system and the necessary rules and regulations for operating a state procurement system. The philosophy of procurement which is selected will have a direct effect on the degree of centralization or decentralization which characterizes the state system. The difference basically is the degree of autonomy allowed State agencies in purchasing their own supplies. Given total independence, agency purchasing officials tend to place first priority on meeting the needs and priorities established by agency

managers. In a more centralized system, a central office will attempt first to find commodities to satisfy the basic needs of all agencies, as economically as possible, before giving priority to an individual agency's preference.

Summary Description of a Centralized State Procurement System

The first requirement for any state purchasing system to be effective and accountable to the public is the statutory authority to exist and operate. The most obvious identifying characteristic of a centralized system is the statutory mandate for a single central office to carry out all purchasing activities for the state. This mandate usually includes authority to establish rules and regulations and grant exemptions.

In a totally centralized state purchasing system participant agencies begin the supply acquisition process by initiating a purchase requisition (PR) to the central state purchasing office (CSP). CSP usually will review the PR for accuracy and clarity in the commodity specifications and compliance with applicable rules and regulations. Competitive price quotations are then solicited from commercial vendors. Once an appropriate vendor has been identified, CSP will cut (or authorize the agency to issue) a purchase order (PO). Upon receipt of the PO, the vendor will deliver or send the commodity to the using agency. Depending on the nature of the state's supply system, the commodity may be sent to a central supply warehouse, inspected, and then distributed to the using agency.

According to a 1979 survey, South Carolina is one of the forty-nine states which has a Central State Purchasing Office which buys or contracts for the supply requirements of most or all State agencies.

Mississippi did not have a central state purchasing office according to the survey. The concept of a central state purchasing office and a high degree of centralization in state procurement practices is endorsed by the United States General Accounting Office, the Council of State Governments, the American Bar Association, and the National Institute of Governmental Purchasing.

Summary Description of a Decentralized Procurement System

The extreme example of decentralization in state purchasing is where each agency buys directly from commercial vendors using its own staff without going through a third party such as a central state purchasing office. Examples approaching this extreme degree of decentralization are more characteristic of large national corporations with widely scattered branch offices. The branch office usually will have its own purchasing staff to fill routine supply needs.

There are many different ways of varying the degree of decentralization in a state's procurement system. South Carolina is one of the thirty-six states cited in the Council of State Governments' survey which provides some sort of statutory exemption authorizing certain agencies under certain circumstances to purchase supplies without going through the Central State Purchasing Office. Implementing and enforcing adequate controls are the most critical elements in maintaining a successful highly decentralized State procurement system. In those states where some purchasing authority is delegated to state agencies it is usually for purchases of small dollar amounts. If the supplies are available from a statewide contract established by the central state purchasing office, agencies generally are required to purchase from the vendor(s)

on the term contracts. In response to the question "what is the usual dollar amount below which agencies are authorized to obtain their own quotations locally?"; the following responses were made in the Council of State Governments' survey.

1. Below \$300	20 states
2. Between \$300 and \$500	16 states
3. Above \$500	14 states
	<u>50</u> total

South Carolina falls in the third category. With some exceptions (discussed later), all purchases over \$1,500 must be made by the State's Central State Purchasing Office, by regulation of the Division of General Services.

Desirable Characteristics of a Public Procurement System in Comparison to the South Carolina System

This section lists five characteristics of a state procurement system considered to be most important to an efficient, effective, and economical operation. Comments are made about each characteristic's relationship to a centralized and a decentralized system where appropriate. This is not intended to be a complete list. It is a summary of the most important and necessary features based on the experiences in other states, and recent national and regional studies by various research organizations. With the discussion of each feature is a brief description of a corresponding South Carolina procurement procedure where one exists.

Consolidated Purchasing Law

For either a decentralized or centralized purchasing system to operate efficiently and effectively, there must be a statute which clearly defines and requires adherence to sound public procurement practices.

Preferably, the statute should be consolidated in one section of the state laws so as to facilitate reference and development of appropriate state rules, regulations and internal procedures within state agencies. When statutes applicable to public procurement are scattered throughout a state's legal code, it is easier for the procurement principles endorsed by the Legislature to become diffused and "watered-down" in interpretation.

In South Carolina, statutes governing State procurement practices are scattered throughout more than two dozen sections and over fourteen titles in the State Code. The Appropriation Act frequently contains additional legal requirements applicable to purchasing. The enabling legislation for many State agencies also has specific references to purchasing practices. In addition, numerous State Attorney General opinions have been issued over the years; these also are scattered throughout the Code attached to their related sections.

RECOMMENDATION

THE AUDIT COUNCIL RECOMMENDS THAT THE
GENERAL ASSEMBLY CONSIDER CONSOLIDATING,
WHEREVER POSSIBLE, THE STATE'S PROCUREMENT
STATUTES INTO ONE SECTION IN THE STATE
CODE.

Statutory Outline of State's Procurement Principles

The state law relating to a state's procurement practices should contain a statement of legislative intent and policy goals. For example, the statute may (1) endorse achieving maximum open and free, equal opportunity competition; (2) state the obligation of all managers and

purchasing officials to practice prudent stewardship of public funds in procurement practices; and (3) specify a rigorous code of conduct for purchasing officials. If the Legislature has made a commitment to a particular degree of centralization in procurement practices, this also should be declared. A clear mandate for compliance with the policy should be included for the agency charged with managing the system in addition to the agency receiving adequate delegation of authority to exercise proper oversight and control. The need for more detailed statutory specification of purchasing practices and standards becomes more important and helpful as a purchasing system becomes less centralized.

In South Carolina, Section 1-11-30 of the State Code assigns authority to the State Budget and Control Board to adopt and promulgate rules and regulations governing purchasing. There is only an indirect statement of legislative intent relating to management principles in Section 1-1-30, (10). This sub-section requires the Board to publish rules and regulations:

(10) Dealing with all other matters necessary or appropriate to the proper, efficient and economical operation of the central purchase and supply functions and the maximum coordination between the Board and departments, institutions and agencies of the State government. [Emphasis Added]

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
INCORPORATING A STATEMENT OF LEGISLATIVE
INTENT, PRINCIPLES, AND POLICY GOALS INTO
THE STATE'S PROCUREMENT LAW.

Requirements to Solicit Competitive Bids

Competition usually results in lower purchase prices. Competition is a fundamental principle of public purchasing. The preferred form is to have a process where a solicitation for sealed bids is widely advertised. Sealed bids are then publicly opened, and the contract is awarded for the lowest bid submitted by a responsive and responsible vendor whose bid satisfies or betters the required specifications. The term responsible bidder, in purchasing language, is defined as, "a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance which may be substantiated by past performance." The term responsive bidder refers to a person who has submitted a bid which conforms in all material aspects to the invitation for bid.

According to a June 1980 report by the United States General Accounting Office (GAO), "forty-four States have laws requiring competitive sealed bidding for purchasing over established thresholds. In the six States where competitive sealed bidding is not required by law, it is the customary practice." They further point out that the most common thresholds are \$2,500 and \$5,000.

In a centralized purchasing system the central state purchasing office usually will carry out the bid advertising, public opening of bid responses and awarding of contract. This may be done for a single large purchase on behalf of a single agency. It also may be done to develop a statewide term contract which allows all agencies to purchase a specified commodity from one or more designated vendors at a guaranteed price. In a decentralized system each agency would carry out either its own bid procedure or conduct the competition according to a standard established by a state law, rule, or regulation.

To be successful, competitive sealed bidding requires familiarity with the market and the desired products and skill in preparing specifications. In addition, the procedures for advertising for bids and the criteria for awarding the contract need to be carefully constructed to ensure maximum, free and open competition. Not all bidding needs to use sealed bids to be fair, open and competitive. There are other techniques, usually applied to small dollar amounts, which can produce competitive bidding. Since free and open competition is considered essential to reducing prices in public purchasing, a statutory guideline stressing the need for competition at all levels of procurement can help ensure the implementation of competitive procurement practices.

In South Carolina, Section 1-1-440 of the State Code sets a purchasing threshold of \$1,500 for soliciting competitive bids.

Notwithstanding any other provision of law, all State agencies and departments, before contracting for fifteen hundred dollars or more with private individuals or companies for products or services, shall invite bids on such contract from at least three qualified sources.*

In addition to the \$1,500 law, the Division of General Services has promulgated a \$1,500 rule. With some specific exceptions for exempted items, "All purchases over \$1,500 must be made by Central State Purchasing...." CSP has internal procedures requiring that formal bid notices requesting submission of sealed bids be mailed to all appropriate vendors for purchases in excess of \$2,500. A "quote letter" may be used for purchases costing between \$500 and \$2,499. However, CSP buyers are required to go beyond the "three sources" requirement

*There are several other references in the Code to various purchasing thresholds relating to capital improvements and certain professional services which are beyond the scope of this report.

to ensure that "sufficient sources are solicited to obtain maximum competition."

The State's \$1,500 law makes no reference to obtaining adequate value at the lowest price; neither does the \$1,500 rule. The Audit Council could find no statutory reference to obtaining prices most advantageous to the State. Agencies are allowed to buy directly from the vendor items costing less than \$1,500 if they are not on a term contract. There are no statutes or rules and regulations requiring the solicitation of competitive price quotations for these purchases. However, if an agency sends its purchasing requisition to Central State Purchasing to obtain items costing under \$1,500, CSP will obtain competitive price quotes.

The total volume of the State's purchases under \$1,500 during FY 79-80 was approximately \$62,488,732 according to the records at Central State Purchasing. Approximately \$56,957,240 of this total was made by agencies directly from vendors. It is not known how much of this purchasing used competitive pricing methods. The implications of this problem are discussed in more detail in Chapter Two.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING THE CURRENT BID LAW (1-1-440) TO
EMPHASIZE OBTAINING THE MOST ADVANTAGEOUS
PRICE FOR THE STATE AND OBTAINING COMPETITIVE
PRICE QUOTATIONS ON PURCHASES COSTING
LESS THAN \$1,500.

Code of Conduct and Sanctions for Purchasing Officials and Managers

A detailed code of conduct and principles for public purchasing officials and responsible managers is important in ensuring the integrity of the procurement system and public confidence in it. Such a code also serves the interests of individual purchasing officials because it can provide a consistent and dependable guide for their professional conduct in carrying out their responsibilities. An official standard for employee conduct is important whether the procurement system is highly centralized or decentralized. The Audit Council's review found that the United States General Accounting Office, the Council of State Governments, the National Institute for Governmental Purchasing, and the American Bar Association all endorse the concept of a rigorous and detailed code of conduct for purchasing officials. The Audit Council concurs with the General Accounting Office and the American Bar Association in recommending that such a code be incorporated into State law with the addition of penalties for violation and the right to recoup from an employee the excess cost created from such a violation. Based on the responses to their 1979 survey, the Council of State Governments made the following comment on recoupment sanctions applicable when an agency failed to comply with purchasing policies which resulted in wasteful expenditures.

Perhaps the most effective is a measure reported by 15 states whereby the offending individual at the agency, or the administrative head of the agency, can be held personally responsible for payment of the wrongly ordered item.

State agency purchasing (including technical colleges' purchases through CSP) annually involves over \$200 million in South Carolina. This volume requires participation by several hundred people at the

State and agency level. Because of (1) the large volume of goods and money, (2) the large number of participants - both State employees and non-State employees, and (3) the diversity and complexity of the entire process, it is an inviting environment for waste, fraud, collusion, and other abuses. Public purchasing is additionally vulnerable to abuse because it is a very difficult area in which to establish evidence of a crime. Illicit activity in public purchasing is generally considered "white collar" crime which traditionally has been difficult to prosecute effectively. The Audit Council noted during its review that the Law Enforcement Assistance Administration grant which has funded the "white collar" crime unit in the State Attorney General's Office terminates in 1981. Other funds have not been made available to allow continuation of this unit. However, since its inception in July 1980 through March 1981, the two staff attorneys in this unit have completed forty-one investigations resulting in twenty-five indictments. Thirty-eight additional investigations are ongoing with ten indictments resulting so far. These investigations have resulted in restitution and fines totaling \$409,109.

In addition to the loss of the "white collar" crime unit, the Audit Council noted that South Carolina ranked seventh among the fifty states and five of the American possessions in number of convictions of public officials from 1976 through 1979, due to Federal prosecutions.

TABLE 1
FEDERAL CONVICTIONS OF PUBLIC OFFICIALS RANKED BY
NUMBER OF CONVICTIONS (1976-1979), TOP TEN STATES

1.	Pennsylvania	187	6.	New Jersey	62
2.	New York	107	7.	South Carolina	61
3.	Ohio	76	8.	Alabama	60
4.	Texas	67	9.	West Virginia	54
5.	Illinois	65	10.	California	54

Source: Federal Prosecutions of Corrupt Public Officials, 1970-1979.
 A Report Compiled by the Public Integrity Section, Criminal
 Division, United States Department of Justice, February 27,
 1980.

The Audit Council reviewed with the staffs of the Attorney General's Office, the State Ethics Commission, and the Central State Purchasing Office, the State's laws and sanctions which could be considered applicable to violators of good purchasing practice. These officials were asked to respond to the Diagnostic Checklist in Table 2. Each respondent cited the State Ethics Act as the statute most applicable in providing conduct guidelines and penalties for public purchasing. However, there was considerable disagreement among the respondents' answers as to specifically how the Ethics Act applied to the questions on the Diagnostic Checklist. Each respondent agreed that a statutory code of professional conduct for purchasing which contains specific sanctions for violations would clarify and strengthen the existing system.

TABLE 2

**DIAGNOSTIC CHECKLIST—
OFFICIAL POLICY TOWARD CORRUPTION**

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	In your jurisdiction, do statutes and ordinances clearly forbid (and clearly define) bribery, extortion, and other forms of official misconduct?
<input type="checkbox"/>	<input type="checkbox"/>	Does your jurisdiction have an official code of ethics specifying what conduct is officially desired and what is officially prohibited?
<input type="checkbox"/>	<input type="checkbox"/>	Do these rules cover all elected officials, appointed commission members, department heads, and lower-ranking employees whose duties may offer opportunities for corrupt acts?
<input type="checkbox"/>	<input type="checkbox"/>	In addition to prohibiting cash payments, do rules prohibit the acceptance of meals, gratuities, discounts, and favors from any individual or firm doing business with the city or county or subject to regulation by the city or county?
<input type="checkbox"/>	<input type="checkbox"/>	Do rules forbid engaging in private business on city/county time or using city/county materials or equipment for private purposes?
<input type="checkbox"/>	<input type="checkbox"/>	Is outside employment that conflicts with official duties forbidden?
<input type="checkbox"/>	<input type="checkbox"/>	Are officials forbidden to represent private interests dealing with city agencies, or take positions with firms they have previously regulated?
<input type="checkbox"/>	<input type="checkbox"/>	Do campaign finance laws set limits on contributions from individuals or firms doing business with the city/county?
		If you answered "yes" to the above questions . . .
<input type="checkbox"/>	<input type="checkbox"/>	Are all personnel covered by the statutes, ordinances, and rules regularly informed of what is required of them in the conduct of their official position or their job?
<input type="checkbox"/>	<input type="checkbox"/>	Are there mechanisms for detecting and dealing with violations?

From the Management Information Service Report of the International City Management Association.

The Central State Purchasing Office follows the Code of Ethics adopted by the National Association of Purchasing Management (Appendix 1) and encourages its use by all State agencies. Although this Code of Ethics is a helpful ethical guide, it does not have the comprehensive applicability, precision of language, sanctions, and recoupment authority contained in the American Bar Association's Model Procurement Code. Neither does it have the force of law.

RECOMMENDATION

THE AUDIT COUNCIL RECOMMENDS THAT THE GENERAL ASSEMBLY CONSIDER INCORPORATING ARTICLE 12 - ETHICS IN PUBLIC CONTRACTING, OF THE AMERICAN BAR ASSOCIATION'S MODEL PROCUREMENT CODE (SEE APPENDIX 2), INTO A CONSOLIDATED SOUTH CAROLINA STATE PROCUREMENT CODE. FURTHER, THE GENERAL ASSEMBLY SHOULD REQUEST THE OFFICE OF THE STATE ATTORNEY GENERAL TO DEVELOP PROPOSALS FOR EXPANDING THE STATE'S CRIMINAL STATUTES SO AS TO MORE SPECIFICALLY ADDRESS ECONOMIC AND "WHITE COLLAR" CRIME THAT CAN OCCUR IN THE AREA OF PUBLIC PURCHASING.

Central Data Base and Data Analysis

A fundamental tool of modern management in both the private and public sectors is the central data base stored in computer files. Every public or private enterprise collects data related to many different

aspects of their daily operations. Basic types of reports can be generated routinely from these files to satisfy various information requirements from government and other sources. In addition, these files permit many kinds of analysis which can help management to measure productivity, to assess performance quality, to forecast budgets, and to spot potential problems early. Purchasing data, if stored and analyzed properly, can be useful in inventory analysis, planning and control. For example, it also can be used to identify which commodities should have statewide term contracts developed for their acquisition. Spending patterns among agencies throughout the year and by geographic region can be identified if the necessary data elements are stored in the data base and appropriate analysis is performed. When bidder and vendor data is included, analytical programs can be applied which aid in the detection of collusive bidding and buying practices.

In a centralized purchasing system the data base ordinarily will be established and maintained by the central purchasing agency. The central office should use the data base for compliance monitoring, analysis, and planning in accordance with sound management practices. Because the purchase requisitions and purchase orders (or purchase order authorizations) are all processed through one office, the data base can be maintained as a relatively simple and efficient process in a centralized procurement system. Depending on the extent and nature of decentralization of purchase requisition and purchase order processing, developing a central data base for a decentralized system will become more complex. Figure 1 is an idealized general diagram of the public purchasing function. It could apply to either a single agency where the "users" are departments within the agency, or it could represent a

1. Review Needs - Spec Development & Review, Value Analysis, Product Testing
2. Aggregate Needs - Requirements Planning, Standardization History Records
3. Determine: (a) One Time Purchase (b) Blanket Order (c) Warehouse (d) Buy Locally
4. Type Requisition - Clerical Support

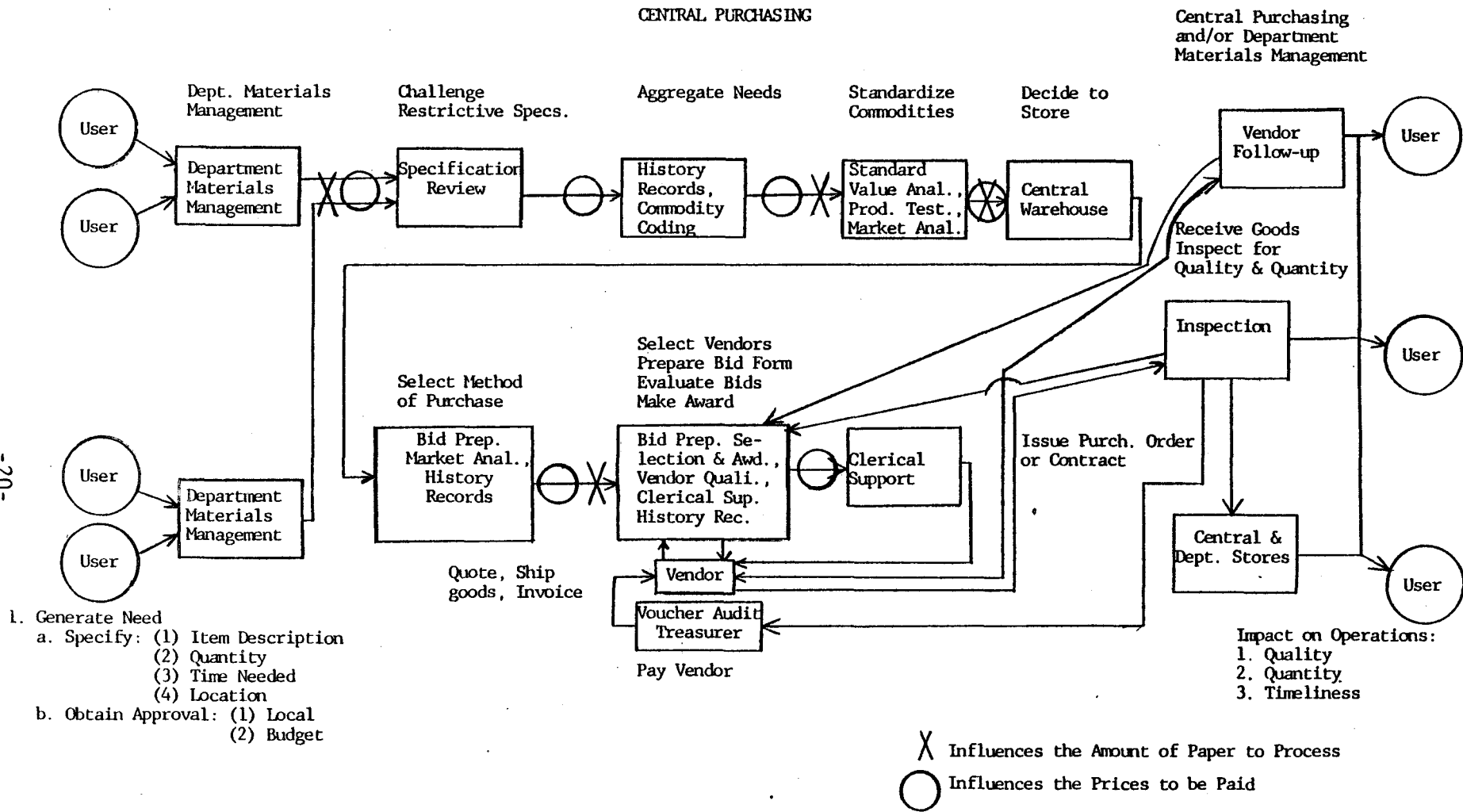


Figure 1. Idealized General Diagram of the Public Purchasing Function

Source: p.9, A Productivity Measurement System for State and Local Government Purchasing and Materials Management Services. City of Detroit and Wayne State University, April 1978.

central state purchasing office where the "users" are State agencies and local governments. For a State to have a useful purchasing data base, the data on purchase orders must be entered into a central computer storage file in a standardized format. The overall efficiency of the system will be increased if approved purchase orders also are cut by the system.

A central data base for a State can be developed whether the purchasing is done by a single office or by individual agencies. South Carolina's system would generally be described as having a centralized purchasing data base, although not all agency purchases are recorded on the system. There are five ways in which purchase order data from South Carolina State agencies may be entered into the data base maintained by the Central State Purchasing Office of the Division of General Services.

- (1) Agency enters data directly into the central file from a remote terminal at the agency. Two agencies use this method: South Carolina Department of Highways and Public Transportation and the Department of Wildlife and Marine Resources.
- (2) 20 agencies provide the data to CSP on computer cards which are then read into the system.
- (3) 27 agencies provide the data to CSP on a computer tape.
- (4) 73 agencies were identified as using a manual reporting form which is sent to CSP and the data is entered into the system by a CSP computer terminal operator. This is done only for purchase orders issued by the agency and where the agency does not have a computer tape or card production capability.
- (5) If CSP issues the purchase order for any agency, CSP will routinely enter the data into the system.

The variety of data entry methods for the State's purchasing information system reflects the flexibility and considerable degree of

decentralization that now exists in South Carolina's purchasing procedures. Although the State has a rudimentary central data base, there are certain problems associated with it which inhibit its usefulness for planning, management, and public accountability. They are discussed in more detail in Chapter Two. These are the types of problems which generally can be resolved by managerial direction and it would be cumbersome and inefficient to attempt to deal with these difficulties through legislation. For example, some agencies have chosen to use reporting methods contrary to those recommended by Central State Purchasing. There are, however, some areas which may need legislative direction. The Audit Council could find no statutory direction or specific authority for the State to maintain a comprehensive central data file relating to public procurement. Neither is it mentioned in the policies, rules and regulations published by the Division of General Services. Similarly, there is no legislated directive to carry out the kinds of analysis discussed at the beginning of this section. The Audit Council also reviewed the American Bar Association's Model Procurement Code in regard to this issue. Although the Model Code requires collection of various records and specifies retention periods, it offers no guidance as to what types of analysis should be performed on this data and to what purpose.

In order to ensure efficiency and effectiveness in development and use of the State's purchasing data, it may be necessary for the Legislature to make a statement of its desire for the State to employ the most modern and effective management techniques in this area.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER INCORPORATING INTO A CONSOLIDATED PROCUREMENT CODE A DIRECTIVE THAT A COMPREHENSIVE CENTRAL FILE OF PURCHASING DATA BE MAINTAINED BY THE DIVISION OF GENERAL SERVICES AND THAT THE DIVISION DEVELOP ANALYTICAL METHODS TO BE APPLIED REGULARLY TO THE DATA WHICH WILL ENHANCE THE ABILITY OF MANAGEMENT TO ENSURE THAT THE STATE'S PUBLIC PROCUREMENT PROCEDURES ARE OPERATING EFFICIENTLY, EFFECTIVELY, ECONOMICALLY, AND IN COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

CHAPTER TWO

Review of State Term Contracts

Term contracts, sometimes known as "open-end" or "blanket" contracts, are contracts under which a source of supply is established for a specific period, at a definite unit price, usually with no guarantee on the quantity that will be purchased. There are four general types of term contracts: (1) definite quantity for a definite period; (2) approximate quantity for a definite period; (3) indefinite quantity for a definite period; and (4) indefinite quantity for an indefinite period. The Central State Purchasing section of the Division of General Services develops the State's term contracts. Regulations published by General Services require State agencies to use the term contracts and require that commodities covered by term contracts must be purchased from the established contractors.

Use of term contracts is an important cost-effectiveness procedure. They can provide advantages and cost savings to both the State and the vendor. For the vendor, term contracts mean business in volume. They also present an opportunity to increase sales volume over a period of time which permits forward planning. The time and expense of repeatedly preparing and submitting bids can be eliminated thus reducing administrative costs. The State's administrative costs are reduced by avoiding repetition in preparing and issuing invitations for bids on the same or similar items, and in receiving, controlling, and evaluating the responses. Use of term contracts allows handling large volumes of purchases with fewer personnel, reduces the ratio of personnel time spent on purchasing similar items, and reduces the costs associated with maintaining inventories.

Term contracts usually have a life of one year and are reviewed in the context of State needs, vendor performance and market conditions at the end of the contract period. Different contracts have different conditions appropriate to the differing characteristics among commodities. The State has 271 term contracts covering approximately 66,500 supply items.

The Audit Council conducted a small test of items on term contracts to help determine whether contract prices actually are lower than other prices that could be obtained in the current market. A judgmental sample of sixteen items was selected from the State's term contract catalogue for the review. The criteria for selection were: (1) multiple vendors were available for the item; (2) comparison of specifications was possible and not too complex; (3) the items were commonly available in the open market. Six of these items eventually had to be excluded because at least one of the selection criteria could not be met. Finally, the test sample consisted of one item each from ten separate contracts. The contract prices were compared to prices available in the open market.

The Audit Council staff contacted each vendor by telephone twice. At the first contact, the caller identified herself as calling to obtain a price quote for a private business. A few days later, a second call was made to the same vendors and the caller was identified as calling on behalf of a State agency. At least three vendors were called for price quotes on each of the ten items. A total of 76 telephone quotes were obtained. At no time was a vendor told that the call was from the Legislative Audit Council in order to avoid unduly influencing the response. Table 3 lists the items sampled, the State term contract

price, and the range of prices quoted both to a private business and to a State agency. In all except two instances, the term contract price was the lowest price available either to a private concern or to a State agency.

In addition to the comparison test of term contract prices the Audit Council asked the following question in its survey of twenty-five State agencies.

Please list any commodities on State Term Contracts which your (purchasing) department consistently can find at lower prices from other sources.

TABLE 3

SUMMARY OF TERM CONTRACT PRICE COMPARISONS

<u>Item^a</u>	<u>State Term Contract Price</u>	<u>Range of Prices^b Quoted to Private Businesses</u>	<u>Range of Prices^b Quoted to State Agencies</u>
Projection Screen ^c	\$149.00 each	\$105.00 - \$177.00	\$144.00 - \$177.00
Polyethelene Can Liner	13.55/case	15.40 - 31.00	13.55 - 33.00
Chain Saws	233.91 each	314.99	223.91 - 285.00
Polaroid Film	6.15/box	6.72 - 9.35	6.15 - 8.42
13" Color TV	322.83 each	323.00 - 399.00 ^d	322.83 - 394.00
IBM Copier Paper	12.95/crtn.	15.76 - 21.20 ^d	12.95 - 20.60
Clip Boards-legal size	.58 each	1.30 - 1.68	.58 - 1.35
Cassette Audio Tapes	.76 each	.90 - 1.04	.76 - 1.09
Batteries Size C (1.5 volts)	.55 each	.55 - 1.00	.55 - 1.05
Brooms	19.50/doz.	22.35 - 58.80	19.50 - 55.80

^aMinimums set forth by term contracts were used; shipping included, where applicable or unless otherwise noted.

^bIncludes quotes from vendor on State Term Contract.

^cFreight not included.

^dVendor on State contract would not quote to an unidentified business.

Table 4 contains the responses to this question. Unfortunately, time limitations did not allow the Audit Council to verify and investigate in further detail the agency responses to this question. The survey, however, also asked the agencies to estimate the dollar amount that could have been saved if they had not been required to purchase from State term contracts. Not all of the nine agencies could provide dollar estimates, however, the estimates that were provided also are listed in Table 4.

It is difficult to make a general statement regarding what constitutes a "best price" or a "best procedure" for obtaining the best price on commodities. It is clear that obtaining a "best price" for a given commodity on a certain day requires time, effort, and familiarity with the commodity and its market. It is widely accepted that term contracts are an important cost-effectiveness tool. However, because of many uncontrollable factors, prices can fluctuate below what is available on a term contract. In a criticism of the Federal Government, the Council of State Governments provided the following discussion of the flaws in the concept of "lowest possible price."

An erroneous idea that a "lowest price" exists somewhere in the market, which the Federal Government should be receiving, handicaps Federal attitudes as to the actualities of product/price competition. Repeatedly, in discussions of Federal procurement in Congressional committee reports, General Accounting Office reports, and Executive branch discussions, there are references to or expectations of obtaining a "lowest possible price" or a "best possible price." This notion ignores, however, that to the extent competition is available and unrestricted, prices are changing almost continuously for a great variety of economic and technological reasons.

State thought holds that prices offered by bidders at the time of bidding and contracting reflect the attractiveness of a buyer's business only at that time and in that market. The purchaser

TABLE 4

STATE AGENCY COMMENTS ON COMMODITIES THEY CLAIM THEY CONSISTENTLY CAN FIND AT

PRICES BELOW TERM CONTRACT PRICES

	<u>Providing Paper/ Paper Products</u>	<u>Furni- ture</u>	<u>Office Supplies</u>	<u>Chemi- cals/ house keeping/ janito- rial</u>	<u>Grounds Maint. Equip.</u>	<u>Office Equip.</u>	<u>Renova- tions through CSP Bids</u>	<u>Auto Repair Parts</u>	<u>Flash- light Batter- ies</u>	<u>Auto Maint. Equip.</u>	<u>Drugs</u>	<u>Paint</u>	<u>T o t a l s</u>	<u>Esti- mated Savings</u>
Citadel	x												1	\$ 4,500
Wildlife	x	x	x										3	130,000
Francis Marion		x	x										2	No Est.
Winthrop			x	x									2	1,000
Clemson		x								x			2	No Est.
Voc. Rehab.			x		x	x	x						4	No. Est.
SCDHPT			x					x	x	x			4	500,000
SCDMR Midlands			x	x							x		3	6,000
DHEC	x	x	x									x	4	80,000
TOTAL	3	4	7	2	1	1	1	1	1	2	1	1	25	\$721,500

-29-

can seek to enhance this attractiveness by numerous ways of stimulating a more competitive environment such as timing the purchase to favorable market conditions, soliciting wider competition, consolidating requirements, keeping solicitations and contract documents simple, evaluating offers in terms of performance/price criteria, reducing sales expense of prospective and successful bidders, paying invoices promptly, and so on. By reason of these many variables, there is no absolute "lowest possible price" which any purchaser has reason to expect or to which he can feel entitled.

The intricacies of term contracts and the claims from the agencies cited in Table 4 were discussed with officials at the Central State Purchasing Office. From these discussions and based on conclusions reached in other research, the following points need to be considered in reviewing the agencies' claims regarding State term contracts.

- (1) As acknowledged above, volatility in the market can occasionally provide prices lower than are available on a term contract for a short time, for some items. Generally, however, term contracts are developed for items whose prices are relatively stable and predictable. If State agencies buy the items from non-term contract vendors, it puts the State in the position of possibly being liable for violation of a contractual obligation. In addition, the intent of the term contract is to make standard items readily available to all State agencies with a minimum of paperwork for both vendor and agency and at a cost savings.
- (2) The Central State Purchasing Office frequently has found that upon closer investigation of claims of prices lower than those available on term contract, prices did not include delivery, or there were major differences in specifications, or only small quantities were available and for a limited time. Another finding has been that the items are available only as a single bulk purchase from the inventory of a defunct business bought out by another business - with no delivery available.

The conclusion drawn by the Audit Council from the review of the State's term contracts is that they are an important cost-effectiveness

technique. They also can be a useful aid to oversight, inventory management and planning. In regard to the claims by the nine agencies in Table 4, the Audit Council views this as a healthy competition. These agencies each have a purchasing department with full-time buyers in daily contact with the market and the State's procurement system. This situation results in a kind of competitive environment where the agencies' staffs are seeking to find a "better deal" than what has been achieved by the Central State Purchasing Office.

Currently, the Central State Purchasing Office has no formal procedures for agencies to use to notify them when prices lower than term contract prices are found. Notification and Central State Purchasing follow-up are done informally if at all. Although agency representatives participate on the advisory committees which review term contracts, there are no formal procedures for recording and using findings relating to fluctuations in market prices below term contract prices during the contract's life.

RECOMMENDATION

THE DIVISION OF GENERAL SERVICES SHOULD CONSIDER DEVELOPING MORE FORMAL PROCEDURES FOR AGENCIES TO USE IN REPORTING PRICES THEY FIND LOWER THAN TERM CONTRACT PRICES. THE INFORMATION SHOULD BE INCORPORATED IN THE TERM CONTRACT REVIEW PROCESS. THE DIVISION SHOULD CONSIDER ESTABLISHING AN INCENTIVE AWARDS PROGRAM OR A MERIT RECOGNITION PROGRAM OPEN TO

ALL PURCHASING STAFFS WHICH WOULD PROVIDE
RECOGNITION FOR, AMONG OTHER THINGS,
INFORMATION LEADING TO IMPROVED TERM
CONTRACT PRICES FOR THE STATE.

Bidding Procedures

By regulation, all purchases over \$1,500 must be made by the Central State Purchasing Office. As cited earlier, CSP will seek competitive prices on all purchases they handle. When an item costs \$2,500 or more the competitive sealed bid solicitation procedure will be employed. CSP will prepare detailed specifications and mail them to each vendor who has asked to be placed on the automated bidder's list. Interested vendors will submit sealed bids which are publicly opened on the preset bid opening date. The contract will be awarded to the lowest responsive and responsible bidder whose bid meets or betters all specifications and conditions of contract.

The concept of competitive sealed bids with public openings has been widely established as the single most important measure in ensuring maximum free and open competition in public procurement. However, there are many conditions to be considered which determine the cost-effectiveness of the bid procedures employed. On June 30, 1977 the South Carolina State Auditor issued an audit report on the Division of General Services which contained a nineteen-page special review of the Office of Central State Purchasing as requested by the Division. Many of the recommendations in that report apparently have been implemented although the Audit Council did not attempt a comprehensive analysis and verification. Selected areas, however, were examined briefly.

Prior to 1977, formal sealed bids were solicited for commodities costing in excess of \$1,500. The State Auditor noted the following.

...approximately 4,000 items in excess of \$1,500 were purchased through formal competitive bids or term contracts in 1976-77. These 4,000 items represented approximately \$38,000,000 of the \$44,000,000 of purchases made by Central State Purchasing during the 1976-77 fiscal year. If this limit had been \$5,000, 1,500 items would have required solicitation of competitive bids for approximately \$31,000,000 or 75% of Central State Purchasing's purchasing activity for 1976-77 fiscal year. Increasing this limit would allow approximately \$7,000,000 (2,500 items) of additional items to be purchased through quote letters resulting in reduced lead time for purchasing as well as reduced processing time for approximately 2,500 requisitions. We suggest that Central State Purchasing look into the legal aspect of increasing the formal competitive bid solicitation limits while still requiring all agencies to route purchases in excess of \$1,500 through Central State Purchasing.

The Division has since raised the formal bid solicitation threshold to \$2,500. The Audit Council noted, however, that Central State Purchasing did not have computer programs in their system to routinely provide analytical information regarding the volume of purchasing at different cost levels and models showing how volumes might be adjusted through adjusting thresholds. With the annual increase in the total volume of purchasing done by the State since 1977, and the impact of inflation, further reductions in lead time may be gained by again raising the dollar threshold for using formal sealed bid procedures and expanding the use of quote letters.

RECOMMENDATION

CENTRAL STATE PURCHASING SHOULD CONDUCT
AN ANALYSIS TO DETERMINE WHETHER IT WOULD
BE COST-EFFECTIVE TO FURTHER INCREASE THE

DOLLAR THRESHOLD FOR SOLICITING COMPETITIVE SEALED BIDS. IN ADDITION, THEY SHOULD DEVELOP COMPUTER PROGRAMS WHICH CAN BE USED ROUTINELY BY MANAGEMENT TO ASSESS THE EFFICIENCY OF THEIR PURCHASING PROCEDURES.

Bidder Lists

The State Auditor's report also cited problems associated with the automated bidders' list. This list is made up of vendors who have filled out an application indicating which commodities they would bid on and requesting that they receive bid solicitations. The following comments are an explanation of the problems in this area from the State Auditor's report.

During our review, we noted that certain problems have been encountered in maintaining and updating the computerized mailing list used in soliciting bids from vendors. These problems appear to be due to two factors. First, many vendors on the Central State Purchasing mailing list can only supply certain items within each commodity class and subclass. Subclass descriptions are generalized and often list numerous items. This results in vendors being sent bid requests for all items listed within a particular subclass even though they can supply only one item. A vendor cannot be removed from the mailing list for the items within a subclass which he cannot supply without also being deleted for items which he can supply.

Second, Central State Purchasing procedures call for vendors to be removed from the mailing list for a particular commodity class and subclass after they have failed to respond to three bid requests. There are presently no procedures for efficiently tabulating bid request responses to determine if a vendor should be removed from the mailing list. Under present procedures, an unresponsive vendor is removed from the mailing list only after the buyer intuitively becomes aware that a vendor is

not bidding on a particular item. Due to the factors listed above, the mailing list for many commodities includes numerous vendors who cannot supply a particular commodity listed within a subclass and unresponsive vendors who have not been removed from the mailing list. This results in excessive time and cost being incurred by Central State Purchasing in preparing and mailing bid requests. We recommend that management adopt more detailed commodity class and subclass descriptions and develop procedures to efficiently tabulate bid request responses through the use of the data processing system.

Since mid-1978 Central State Purchasing has made progress in the use of new computer programs to help analyze both the frequency of responses to bid solicitations, and ways in which to reduce the volumes of mailing and processing. However, the new procedures are not as refined as they could be and Central State Purchasing has indicated they will continue to seek ways to improve in the use of computer-aided bidder analysis.

Since Central State Purchasing has recently entered an agreement with the Governor's Office to ensure that minority businesses have an equitable opportunity to participate in the State's procurement process, it is increasingly important that new procedures be developed to manage the bidder's list and assess its effectiveness. In addition, the Office of the State Comptroller General is implementing the new Statewide Accounting and Reporting System (STARS). One of the improvements that is being attempted with this system is to develop the capability to analyze spending patterns by payee. To do this efficiently, standardized identification numbers need to be developed and assigned to commercial vendors.

The Central State Purchasing Office has developed five-digit identification codes for all vendors from whom the State buys commodities using a purchase order. There are obstacles to using this code for

analysis. For example, multiple numbers may be assigned to the same corporation to identify different billing addresses or to identify different supply centers for different types of commodities. An illustrative case is the Exxon Corporation which has twenty-two different vendor identification numbers on the State's central vendor file. The numbering system is not structured in a way that allows convenient aggregation of the volume of business done with the Exxon Corporation without sorting through the different alphabetical names. The vendor file does indicate whether the vendor is only a vendor or is both a vendor and a bidder. The January 1979 vendor file listed 44,997 vendors and bidders with unique vendor identification numbers. Of this total, 4,957 were listed as bidders and 40,040 were listed as vendors.

Some research has been done by the Division of General Services and by the Comptroller General's Office into the feasibility of using the Federal Employer Identification Number to identify vendors who receive payment from the State. If a standardized vendor identification number is developed for use in both the State's accounting system and the purchasing system, this will facilitate the capability to use automated procedures to analyze the State's spending and purchasing practices. The types of analysis which could be conducted would help identify collusive bidding and buying practices and favoritism. Standardization also would help in analyzing agency spending patterns, improving budget forecasting and developing inventory controls and projections. It also will be essential in identifying minority-owned businesses and charting their progress in doing business with the State.

RECOMMENDATION

CENTRAL STATE PURCHASING SHOULD IMPLEMENT A COMPREHENSIVE OVERHAUL OF THE VENDOR FILE SYSTEM. THE REVISION SHOULD CONSIDER AT LEAST THE FOLLOWING OBJECTIVES:

- (1) ESTABLISHING A STANDARD VENDOR IDENTIFICATION CODE NUMBER IN COORDINATION WITH THE COMPTROLLER GENERAL'S OFFICE;
- (2) IMPROVING THE USE OF THE COMPUTER SYSTEM TO PREPARE AND MAIL SOLICITATIONS TO HELP ENSURE THAT ONLY VENDORS WHO HAVE INDICATED AN INTEREST IN THE COMMODITIES BEING PLACED ON BID RECEIVE SOLICITATIONS;
- (3) IN COORDINATION WITH THE COMPTROLLER GENERAL, THE STATE AUDITOR, AND THE AUDIT COUNCIL, DEVELOPING COMPUTER PROGRAMS WHICH UTILIZE DATA FROM THE PURCHASING SYSTEM AND THE STATEWIDE ACCOUNTING AND REPORTING SYSTEM TO ANALYZE SPENDING AND PURCHASING PRACTICES IN STATE GOVERNMENT.

Training of Purchasing Personnel and Job Classifications

Personnel training is one of the most critical factors in the successful operation of a procurement system. The Audit Council attempted to examine briefly the relationship between the State Personnel system's job classifications for purchasing personnel, sources of training, and the Universal Certification Requirements for Public Personnel developed by the National Institute of Governmental Purchasing (NIGP) and the National Association of State Purchasing Officials (NASPO). Purchasing directors were asked to answer questions relating to this issue on the Audit Council's survey of twenty-five State agencies. Some large agencies such as Mental Retardation with dispersed operations have a chief purchasing official for each branch operation. Therefore, comments from twenty-nine chief purchasing officials were received from the twenty-five agencies in the Audit Council survey.

Only four of the twenty-nine respondents indicated some dissatisfaction with the State's job classification specifications for purchasing personnel. However, several persons commented verbally or in writing that there should be a "purchasing career path." This seems to be at least in part due to the frequency with which clerical/secretarial personnel become involved extensively with purchasing activities and often accumulate considerable expertise.

The survey provided a list of five sources of training from which respondents were asked to indicate which were the first and second most frequent sources of training. They were then asked to state which category was the most important and useful source of training. Since six respondents indicated more than one category as the "most frequent" and as the "most important" the analysis included the total

frequency of all responses. Figure 2, shows the "most frequent" sources of training based on the survey. In comparing the responses to both types of questions the results indicate that what purchasing officials feel to be the "most important" source of training (on-the-job training) is also the "most frequent" source. Training by the Central State Purchasing office was ranked second in both frequency and importance. Internal training provided by the agency ranked third in frequency and importance. Although eight officials responded that "out-of-state" training was the second most frequent source, none cited it as the most important and useful.

The survey respondents also were asked whether they were familiar with the Universal Certification Requirements for Public Purchasing Personnel. Only nine of the twenty-nine were aware of the requirements in this national program. Eight of those familiar with the program stated they approved of the certification requirements. Six respondents supported use of the requirements in the State Personnel system's job classification descriptions for purchasing positions. Only five individuals were in the process of obtaining certification either as a Certified Public Purchasing Officer (CPPO) or Professional Public Buyer (PPB).

The national certification program was begun in 1964. The certification requirements are rigorous and appear to promote a high degree of professionalism and adherence to standards of professional practice and ethics. It appears that the State, and its employees who work in purchasing, could benefit from involvement in a professional training program which provides both career development incentives for employees and high standards of job performance for the State. The Division of General Services, in coordination with the Training Division of the

FIGURE 2

MOST FREQUENTLY USED SOURCES OF TRAINING FOR AGENCY PURCHASING PERSONNEL

Types of Training		Frequency of Responses (Out of 29 possible)																			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
A-Courses offered through colleges, universities, technical schools	*(1)	x	x																		
	*(2)	x	x	x	x	x	x	x													
B-Internal training provided by agency purchasing dept.	(1)	x	x	x	x	x	x	x	x	x	x										
	(2)	x	x	x	x	x	x					x	x								
C-Training provided through State Personnel and/or General Services	(1)	x	x	x	x	x	x	x													
	(2)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x					
D-Training provided through sources outside S. C.	(1)	None																			
	(2)	x	x	x	x	x	x	x	x												
E-On-the-job training	(1)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
	(2)	x	x	x	x																
F-Other	(1)	None																			
	(2)	None																			

*Note: (1) - Most frequently used source of training
 (2) - Second most frequently used source of training

State Personnel Division, has begun to offer more formal training related to national certification. This training has been well attended and well received. The Central State Purchasing office has several staff members who already are certified or are in the process of attaining certification. Management officials at Central State Purchasing have commented that this is a very worthwhile program. Based on discussions with personnel from agencies and Central State Purchasing, the State should explore establishing a career development program for purchasing personnel which is linked to the national certification program and also is reflected in the State's job descriptions for classified purchasing positions.

RECOMMENDATION

THE DIVISION OF GENERAL SERVICES, IN COORDINATION WITH THE STATE PERSONNEL DIVISION, SHOULD STUDY THE POSSIBLE BENEFITS TO THE STATE THROUGH DEVELOPING A PROFESSIONAL CAREER PROGRAM IN PURCHASING WHICH IS LINKED TO THE NATIONAL CERTIFICATION REQUIREMENTS. THE STUDY ALSO SHOULD CONSIDER HOW THE STATE'S JOB CLASSIFICATION SYSTEM COULD BE MODIFIED TO SUPPORT THE PROGRAM WITHOUT REQUIRING CERTIFICATION AS A PRECONDITION OF EMPLOYMENT.

Staff Size and Purchasing Volume

Table 5 displays the number of purchasing personnel in the twenty-nine purchasing departments surveyed in comparison with the agencies'

annual dollar volume of purchasing. Twenty of the departments reported an annual volume under \$4.6 million. Half of these twenty departments operate with purchasing staffs numbering two or less. The other ten departments in this category operate with staffs ranging in size from three to eight. It may be reasonable to expect some increase in staff size as the volume of agency purchasing increases. A larger number of purchasing officials also may be employed in a more decentralized agency with branch operations dispersed around the State. However, this may be a fruitful area to seek personnel reductions because three departments with annual purchasing volumes ranging from \$9 million to \$36 million operate with staffs of four or less. This survey was too limited in scope to draw firm conclusions. However, these preliminary findings indicate a need for a more detailed and comprehensive study.

RECOMMENDATION

THE DIVISION OF GENERAL SERVICES, IN COORDINATION WITH THE STATE PERSONNEL DIVISION AND THE BUDGET DIVISION OF THE STATE AUDITOR'S OFFICE, SHOULD CONDUCT A COMPREHENSIVE STUDY INTO THE NUMBER OF STAFF NECESSARY TO OPERATE THE VARIOUS TYPES OF PURCHASING OFFICES IN STATE GOVERNMENT; ESPECIALLY TAKING INTO CONSIDERATION THE VOLUME OF PURCHASING ACTIVITY. BASED ON THIS STUDY, THE DIVISION OF GENERAL SERVICES SHOULD ESTABLISH GUIDELINES FOR ORGANIZING AND STAFFING PURCHASING DEPARTMENTS.

TABLE 5

STAFF SIZE COMPARED TO PURCHASING VOLUME

Annual Volume of Purchasing Millions of Dollars	Staff Size							Total No. of Agencies
	0-2	3-4	5-6	7-8	9-10	11-12	13-14	
\$ 0 - 4.6	10	5	4	1				20
4.6 - 9.2				1		1	1	3
9.2 - 13.8	1							1
13.8 - 18.4								0
18.4 - 23.0						1		1
23.0 - 27.6	1							1
27.6 - 32.2				1				1
32.2 - 36.8		1			1			2
Total No. of Agencies	12	6	4	3	1	2	1	29

APPENDICES

APPENDIX ONE

ETHICS

Central State Purchasing adheres to the Code of Ethics as adopted by the National Association of Purchasing Management for the purchasing official:

- (1) To consider, first, the interest of his company in all transactions and to carry out and believe in its established policies.
- (2) To be receptive to competent counsel from his colleagues and to be guided by such counsel without impairing the dignity and responsibility of his office.
- (3) To buy without prejudice, seeking to obtain the maximum ultimate value for each dollar of expenditure.
- (4) To strive consistently for knowledge of the materials and processes of manufacture, and to establish practical methods for the conduct of his office.
- (5) To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery.
- (6) To accord a prompt and courteous reception, so far as conditions will permit, to all who call on a legitimate business mission.
- (7) To respect his obligations and to require that obligations to him and his company be respected, consistent with good business ethics.
- (8) To avoid sharp practice.
- (9) To counsel and assist fellow purchasing agents in the performance of their duties, whenever occasion permits.
- (10) To cooperate with all organizations and individuals engaged in activities designed to enhance the development and standing of purchasing.

APPENDIX TWO

A.B.A. Model Procurement Code, Article 12

512-101

ARTICLE 12—ETHICS IN PUBLIC CONTRACTING

Part A—Definitions

§12-101 Definitions of Terms Used in this Article.

(1) *Blind Trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

(2) *Confidential Information* means any information which is available to an employee only because of the employee's status as an employee of this [State] and is not a matter of public knowledge or available to the public on request.

(3) *Conspicuously* means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

(4) *Direct or Indirect Participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(5) *Financial Interest* means:

(a) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past [year] has received, or is presently or in the future entitled to receive, more than [\$ _____] per year, or its equivalent;

(b) ownership of such interest in any property or any business as may be specified by the [Ethics Commission]; or

(c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(6) *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(7) *Immediate Family* means a spouse, children, parents, brothers and sisters, [and such other relatives as may be designated by the Ethics Commission].

(8) *Official Responsibility* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct [State] action.

(9) *Purchase Request* means that document whereby a Using Agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

COMMENTARY:

(1) Examples of a conspicuously written item within the meaning of Subsection (3) are a printed heading in capitals, such as "COVENANT RELATING TO CONTINGENT FEES", or the use of a different typeface or larger typeface than other materials in proximity to the clause.

(2) In Subsection (5)(a), a dollar value of yearly entitlements has been omitted. The amount to be inserted in that subparagraph is an optional matter for enacting jurisdictions.

APPENDIX TWO (CONTINUED)

§12-101

DEFINITIONAL CROSS-REFERENCES:

"Business"	Section 1-301(1)
"Construction"	Section 1-301(4)
"Contract"	Section 1-301(5)
"Contractor"	Section 1-301(7)
"Employee"	Section 1-301(10)
"Governmental Body"	Section 1-301(11)
"May"	Section 1-301(13)
"Person"	Section 1-301(14)
"Procurement"	Section 1-301(15)
"Regulation"	Section 1-301(18)
"Services"	Section 1-301(19)
"Shall"	Section 1-301(20)
"Specification"	Section 4-101(1)
"Supplies"	Section 1-301(21)

Part B—Standards of Conduct

§12-201 **Statement of Policy.**

Public employment is a public trust. It is the policy of the [State] to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the [State]. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the [State] procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the [State] also observe the ethical standards prescribed herein.

§12-202 **General Standards of Ethical Conduct.**

(1) *General Ethical Standards for Employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in: Section 12-204 (Employee Conflict of Interest); Section 12-205 (Employee Disclosure Requirements); Section 12-206 (Gratuities and Kickbacks); Section 12-207 (Prohibition Against Contingent Fees); Section 12-208 (Restrictions on Employment of Present and Former Employees); and Section 12-209 (Use of Confidential Information).

(2) *General Ethical Standards for Non-Employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and Section 12-204 through Section 12-209 of this Article is also a breach of ethical standards.

COMMENTARY:

(1) The six specific standards of ethical conduct which must be met by employees and non-employees are incorporated into this Section. Non-employees, as well as employees, are required to meet ethical standards of conduct. Any effort by any person to influence a public employee to

APPENDIX TWO (CONTINUED)

512-204

breach the standards of ethical conduct applicable to employees constitutes a breach of ethical standards.

(2) Some governmental agencies have adopted a practice of requiring each new employee dealing with the award or administration of governmental funds to certify that the employee has received, read, and understood the standards of conduct for governmental agencies. It is essential that those dealing with the [State] also observe the ethical standards of this Code and that procedures be implemented to make sure that contractors understand the required standards of ethical conduct.

§12-203 Criminal Sanctions.

To the extent that violations of the ethical standards of conduct set forth in this Part constitute violations of the [State Criminal Code], they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Article.

§12-204 Employee Conflict of Interest.

(1) *Conflict of Interest.* It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- (c) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(2) *Financial Interest in a Blind Trust.* Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the [Ethics Commission].

(3) *Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.* Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the [Ethics Commission] in accordance with Section 12-401(3) ([Ethics Commission], Waiver) for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(4) *Notice.* Notice of this prohibition shall be provided in accordance with regulations promulgated by the [Ethics Commission].

COMMENTARY:

The term "financial interest" used in this Section is defined in Section 12-101(5).

APPENDIX TWO (CONTINUED)

§12-205

§12-205 Employee Disclosure Requirements.

(1) *Disclosure of Benefit Received from Contract.* Any employee who has, or obtains any benefit from, any [State] contract with a business in which the employee has a financial interest shall report such benefit to the [Ethics Commission]; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(2) *Failure to Disclose Benefit Received.* Any employee who knows or should have known of such benefit, and fails to report such benefit to the [Ethics Commission], is in breach of the ethical standards of this Section.

(3) *Notice.* Notice of this requirement shall be provided in accordance with regulations promulgated by the [Ethics Commission].

§12-206 Gratuities and Kickbacks.

(1) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

§12-207 Prohibition Against Contingent Fees.

(1) *Contingent Fees.* It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a [State] contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(2) *Representation of Contractor.* Every person, before being awarded a [State] contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitutes a breach of ethical standards.

(3) *Contract Clause.* The representation prescribed in Subsection (2) of this Section shall be conspicuously set forth in every contract and solicitation therefor.

COMMENTARY:

The proscription stated in Subsection (1) shall not be understood to prevent an attorney, an accountant, or other professional person from representing a client in the pursuit of professional duties. For example, it would not prevent an attorney from representing a client in a bid protest

APPENDIX TWO (CONTINUED)

512-208

nor would it prevent an attorney or an accountant from entering into contract negotiations with a [State] agency. However, it would preclude a professional or any other person engaged in the actual act of soliciting or selling to the [State] from being paid on a contingent basis.

§12-208 Restrictions on Employment of Present and Former Employees.

(1) *Contemporaneous Employment Prohibited.* Except as may be permitted by regulations or rulings of the [Ethics Commission], it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the [Ethics Commission].

(2) *Restrictions on Former Employees in Matters Connected with Their Former Duties.*

(a) *Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.* It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the [State], in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy,

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the [State] is a party or has a direct and substantial interest.

(b) *One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible.* It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the [State], in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy,

in matters which were within the former employee's official responsibility, where the [State] is a party or has a direct or substantial interest.

COMMENTARY:

Where considered appropriate, a jurisdiction may desire to enact a more stringent provision which provides that, for a period of one year following termination of employment, an employee may not enter into any arrangement with any contractor if the employee had personally and substantially dealt with such contractor or had official responsibility concerning a contract with the contractor. A similar provision is found in Kansas Statutes §46-233(a) (Supp. 1977) and The Consumer Product Safety Act, 15 U.S.C. §2053 (1970).

(3) *Disqualification of Business When an Employee Has a Financial Interest.* It shall be a breach of ethical standards for a business in which an employee has a financial interest

APPENDIX TWO (CONTINUED)

512-208

knowingly to act as a principal, or as an agent for anyone other than the [State], in connection with any:

- (a) judicial or other proceeding, application, request for a ruling, or other determination;
- (b) contract;
- (c) claim; or
- (d) charge or controversy.

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the [State] is a party or has a direct and substantial interest.

(4) *Selling to the [State] After Termination of Employment is Prohibited.* It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed [\$_____], to engage in selling or attempting to sell supplies, services, or construction to the [State] for one year following the date employment ceased.

The term "sell" as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this [State], nor shall a former employee be precluded from serving as a consultant to this [State].

COMMENTARY:

(1) This Section places restrictions on the contemporaneous employment of present employees who are involved in the procurement process. It also places permanent and temporary disqualifications on the employment of former employees.

(2) Subsection (1) provides that no employee participating directly or indirectly in the procurement process may become an employee of parties contracting with the particular governmental body in which the employee is employed except as may be permitted under [Ethics Commission] regulations. For the definition of "direct or indirect participation", Section 12-101(4) should be consulted.

(3) Subsection (2)(a) provides that former employees are permanently disqualified from knowingly acting as a principal, or agent for anyone other than the [State], in certain matters in which the employee had participated personally and substantially while employed by the [State] where the [State] is a party or has a direct and substantial interest.

(4) Under Subsection (2)(b) a former employee is also prevented from appearing for one year after cessation of the employee's official responsibility before any court, department, or agency in connection with any matter which was within the employee's official responsibility where the [State] is a party or directly and substantially interested.

(5) Subsection (3) prohibits businesses in which the employee has a financial interest from knowingly acting as principals, or as agents for anyone other than the [State], in any matters in which the [State] employee personally and substantially participates or which is the subject of the employee's official responsibility where the [State] is a party or has a direct and substantial interest. The definition of "financial interest" is found in Section 12-101(5). This provision, which applies to businesses of employees, is distinguishable from Subsection (1), which is applicable to employees themselves. Section 12-204 (Employee Conflict of Interest) is also applicable only to employees and, unlike the immediate Section which relates to employment and business arrangements, is aimed at a broader array of financial interests.

APPENDIX TWO (CONTINUED)

§12-302

(3) *Right to Recover from Non-Employee Value Transferred in Breach of Ethical Standards.* The value of anything transferred in breach of the ethical standards of this Article or regulations promulgated hereunder by a non-employee shall be recoverable by the [State] as provided in Section 12-303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).

(4) *Right of the [State] to Debar or Suspend.* Debarment or suspension may be imposed by the [Ethics Commission] in accordance with the procedures set forth in Section 9-102 (Authority to Debar or Suspend) for breach of the ethical standards of this Article, provided that such action may not be taken without the concurrence of the [Attorney General].

(5) *Due Process.* All procedures under this Section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a [State] contract.

COMMENTARY:

The power to debar or suspend, with appropriate safeguards, is primarily entrusted to the Chief Procurement Officer under procedures and conditions set forth in Section 9-102 (Authority to Debar or Suspend). The supplementary and limited jurisdiction of the [Ethics Commission] to debar or suspend for violations of ethical standards is granted by Subsection (4) in the interest of providing a procedure which may be utilized in those cases where it is desirable for an outside, independent agency to proceed with debarment or suspension.

§12-303 **Recovery of Value Transferred or Received in Breach of Ethical Standards.**

(1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this Article or regulations promulgated hereunder by an employee or a non-employee may be recovered from both the employee and non-employee.

(2) *Recovery of Kickbacks by the [State].* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the [State] and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

COMMENTARY:

The definition of "kickback" may be found in Section 12-206(2).

Part D—[Ethics Commission]

§12-401 **[Ethics Commission].**

(1) *Regulations.* The [Ethics Commission] shall promulgate regulations to implement this Article and shall do so in accordance with the applicable provisions of the [Administrative Procedure Act] of this State.

(6) Subsection (4) provides that former high-level employees above a salary level to be prescribed by the enacting jurisdiction are prohibited from selling to the [State] for one year following termination of their employment.

§12-209 Use of Confidential Information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

COMMENTARY:

The term "confidential information" is limited by its definition in Section 12-101(2) to information which is available only because of one's status as a [State] employee

Part C—Remedies

§12-301 Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.

(1) *Existing Remedies Not Impaired.* Civil and administrative remedies against employees which are in existence on the effective date of this Code shall not be impaired.

(2) *Supplemental Remedies.* In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the [Ethics Commission] may impose any one or more of the following:

- (a) oral or written warnings or reprimands;
- (b) suspension with or without pay for specified periods of time; and
- (c) termination of employment.

(3) *Right to Recover from Employee Value Received in Breach of Ethical Standards.* The value of anything received by an employee in breach of the ethical standards of this Article or regulations promulgated hereunder shall be recoverable by the [State] as provided in Section 12-303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).

(4) *Due Process.* All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

§12-302 Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards.

(1) *Existing Remedies Not Impaired.* Civil and administrative remedies against non-employees which are in existence on the effective date of this Code shall not be impaired.

(2) *Supplemental Remedies.* In addition to existing remedies for breach of the ethical standards of this Article or regulations promulgated hereunder, the [Ethics Commission] may impose any one or more of the following:

- (a) written warnings or reprimands;
- (b) termination of transactions; and
- (c) debarment or suspension from being a contractor or subcontractor under [State] contracts.

APPENDIX TWO (CONTINUED)

§12-402

COMMENTARY:

For examples of detailed problems or matters that the [Ethics Commission] might wish to address through regulations, see *The Standards of Conduct for the United States Department of Justice*, 28 C.F.R. §45.735-15 (1976). The [Ethics Commission] may particularly wish to require disclosure of substantial political contributions of contractors.

(2) *Advisory Opinions.* On written request of employees or contractors, the [Ethics Commission] may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Such requests and advisory opinions must be duly published in the manner in which regulations of this [State] are published. Compliance with requirements of a duly promulgated advisory opinion of the [Ethics Commission] shall be deemed to constitute compliance with the ethical standards of this Article.

(3) *Waiver.* On written request of an employee, the [Ethics Commission] may grant an employee a written waiver from the application of Section 12-204 (Employee Conflict of Interest) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the [State] so require or when the ethical conflict is insubstantial or remote.

COMMENTARY:

(1) Some jurisdictions may want to use existing agencies to issue regulations pertaining to standards of ethical conduct. Other jurisdictions may wish to create a special "Ethics Commission" for this purpose. Therefore, the words "Ethics Commission" are bracketed wherever they appear in this Article.

(2) If an enacting jurisdiction chooses to create an [Ethics Commission], it will be necessary to adopt a regulation pertaining to its structure, duties, powers, and the appointment of its members.

(3) Subsection (2) authorizes an advisory opinion procedure which will provide guidance to public employees and contractors as to whether a prospective course of conduct is proper.

(4) Subsection (3) authorizes the [Ethics Commission] to waive the application of specified provisions of Article 12 to public employees when the public good will be served.

(5) If invoked, the waiver provision provides an administrative mechanism for averting the necessity of litigating such questions as whether an employee has a conflict of interest, and if so, to what extent that employee's further participation in the matter is barred. In *Graham v. McGill*, 345 N.E.2d 888 (Mass. 1976), a dispute over such questions resulted in litigation which could have been avoided if a provision similar to Subsection (3) had been available.

§12-402 Appeal of Decisions of the [Ethics Commission].

(1) *General.* Except as provided under Subsection (2) of this Section, a decision of the [Ethics Commission] under Section 12-301 (Civil and Administrative Remedies Against Employees Who Breach Ethical Standards) or Section 12-302 (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards) shall be reviewable in accordance with the [Administrative Procedure Act] of this State.

(2) *Debarment or Suspension.* A decision of the [Ethics Commission] regarding debarment or suspension under Section 12-302(2)(c) (Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards, Supplemental Remedies) shall be reviewable as provided in Section 9-402(2) (Time Limitations on Actions, Debarments and Suspensions for Cause).