Procurement Plan

[Insert County Name] County Department of Job and Family Services/Child Support Enforcement Agency/Public Children Services Agency

[DATE]

Section I - Procurement Standards

A. Preface

Chapter 5101:9-4, Ohio Administrative Code (OAC) establishes general standards for the procurement of goods and services by county family services agencies in Ohio. Rule 5101:9-4-02, OAC, Standards for Acquisition, requires that each county agency establish written acquisition standards to ensure that all purchase of goods and services are performed in accordance with applicable federal and state statutes, federal regulations, state administrative rules, and local policies.

This plan has been adopted by the [insert county name] [Board of County Commissioners] on behalf of the [insert county name] Department of Job and Family Services/Child Support Enforcement Agency/Public Children Services Agency (CDJFS/CSEA/PCSA) to satisfy this requirement of the administrative rule. All acquisitions of goods or services by the [insert county name] CDJFS/CSEA/PCSA must be made in accordance with the requirements of this plan.

B. Applicable Law

This plan was written in accordance with applicable federal and state statutes, federal regulations, state administrative rules, and local policies, including, but not limited to:

- 45 CFR 92;
- 7 CFR 3016;
- 29 CFR 97;
- 2 CFR 225 (OMB Circular A-87);
- OMB Circular A-102;
- OMB Circular A-133;
- Chapter 307, Revised Code;
- Chapter 3125, Revised Code;
- Chapter 5153, Revised Code;
- Chapter 5101:12-1, OAC;
- Chapter 5101:9-04, OAC; and
- [insert reference to applicable local policies, if any].

The [insert county name] CDJFS/CSEA/PCSA will, as a matter of county policy, comply with all directives of applicable federal and state statutes, federal regulations, state administrative rules, and local policies. In the event of changes in applicable federal and state statutes, federal regulations, state administrative rules, and local policies subsequent to the adoption of this plan, [insert county name] CDJFS/CSEA/PCSA must comply with the applicable law notwithstanding the fact that this plan may not have yet been revised to

reflect such changes. The Board of County Commissioners will update this plan as expeditiously as possible to reflect such changes.

The expenditure of federal Title XX, TANF/Title XX Transfer, and Child Care Development Block Grant monies by a county agency is not subject to the requirements of the grants management common rule (45 CFR 92; 7 CFR 3016; 29 CFR 97), OMB Circular A-102, or 5101:12-10, OAC. However, procurements with such monies are subject to the requirements of 2 CFR 225 (OMB Circular A-87), OMB Circular A-133, and [insert reference to applicable local policies, if any]. For acquisitions with such monies, the [insert county name] CDJFS/CSEA/PCSA will comply with the requirements of the Social Services State Plan adopted by the Ohio Department of Job and Family Services (ODJFS) and any local plan filed with ODJFS.

Section 307.86, Revised Code, exempts acquisitions by a CDJFS/CSEA/PCSA under section 329.04, Revised Code, with regard to family services duties or workforce development activities, from the competitive bidding requirements of Sections 307.86 through 307.92, Revised Code. **However, it is important to note that acquisitions exempt from state competitive bidding requirements are not exempt from all federal requirements.**

C. Procurement Authority

The director of the [insert county name] CDJFS/CSEA/PCSA, in exercising contracting authority pursuant to Chapter 329, Revised Code, shall act in accordance with the applicable law, good administrative practice and sound business judgment. In addition, all officers, employees and agents of the [insert county name] CDJFS/CSEA/PCSA and of the Board of County Commissioners, when acting for or on behalf of the [insert county name] CDJFS/CSEA/PCSA, must act in accordance with the applicable law, good administrative practice and sound business judgment.

The [insert county name] CDJFS/CSEA/PCSA will provide for settlement of all contractual and administrative issues arising out of procurements entered into in support of local, state and/or federal grants. [insert county name] CDJFS/CSEA/PCSA will refer all violations of law to local, state or federal authorities having proper jurisdiction.

D. Definitions

Definitions applicable to acquisitions by county agencies are set forth in Chapter 5101:9-4, OAC, and are reproduced in Appendix A to this plan. These definitions must be applied in all uses of this plan.

Section II - Standards of Conduct

A. Fiduciary Responsibilities/Prudent Judgment

Maintaining the integrity of public procurement is crucial in preventing fraud and abuse of public funds. All officers, employees and agents of the [insert county name] CDJFS/CSEA/PCSA and of the Board of County Commissioners, when acting for or on behalf of [insert county name] CDJFS/CSEA/PCSA, have a responsibility to act with prudent judgment in purchasing matters and shall not abuse their positions in making decisions as to the administration of the procurement function. All [insert county name] CDJFS/CSEA/PCSA officers, employees and agents shall comply with the requirements of this plan and the prescribed standards of conduct in awarding, recommending, approving, monitoring, and administering contracts and purchases.

B. Legal Restrictions

All officers, employees and agents of the [insert county name] CDJFS/CSEA/PCSA and of the Board of County Commissioners must, as a matter of policy, comply with all directives found in the foregoing legal requirements without regard to whether they are specifically referenced in this plan.

Ohio Ethics Law - All officers, employees and agents of the [insert county name] CDJFS/CSEA/PCSA and of the Board of County Commissioners must comply with the requirements of the Ohio ethics law and Ohio law pertaining to offences against justice and public administration, including, but not limited to, Sections 102.03, 102.04, 2921.42 and 2921.43, Revised Code.

Copies of the statutes are reproduced in Appendix B to this plan. They are also available in the director's office or online at www.ethics.ohio.gov. Educational information related to the Ohio ethics laws may be found online at www.ethics.ohio.gov/EducationandPublicInfo.html. In addition, if any officers, employees or agents of the [insert county name] CDJFS/CSEA/PCSA are uncertain of the propriety of a specific course of action they may consult with the [insert name of county agency representative or county prosecuting attorney's staff with whom they may consult]. Ethics information regarding specific proposed actions may also be obtained from the Ohio Ethics Commission staff on a prospective basis by calling (614) 466-7090.

Gifts and Gratuities - No officer, employee or agency of the [insert county name] CDJFS/CSEA/PCSA or of the Board of County Commissioners may solicit or accept gratuities, favors, or anything of value as defined in Section 1.03, Revised Code, from anyone doing business with or seeking to do business with, or regulated by the agency, including contractors, vendors, and potential contractors and vendors.

Conflict of Interest - No officer, employee, or agent, of the [insert county name] CDJFS/CSEA/PCSA or of the Board of County Commissioners may participate in the selection, award, recommendation, approval, monitoring, or administration of any contract or purchase if a real, potential, or apparent conflict of interest could arise. A conflict of interest could arise if any of the following individuals or organizations has a financial, personal, or other interest in the individual or company selected for the award of a contract, purchase, or grant:

1. Officers, employees, agents or any member of their immediate families;
2. The officers', employees', or agents' business associates or partners;
3. Any organization for which any of the above is an officer, employee or agent; and
4. Any organization which employs or is about to employ the officer, employee, or agent or a member of the officers', employees' or agents' immediate families or business associates.

Officers, employees or agents must immediately notify their supervisor or principal whenever they identify a real, potential, or actual conflict of interest on their part. It is the policy of the [insert county name] CDJFS/CSEA/PCSA under such circumstances to relieve the employee from further participation in selection, award or administration of any procurement or resulting contract which presents a conflict of interest.

Personal Interests - No officer, employee or agency of the [insert county name] CDJFS/CSEA/PCSA or of the Board of County Commissioners may:

- Sell, attempt to sell or act in a representative capacity for a vendor or other person attempting to sell

goods or services to the county agency;

- Sell or attempt to sell any goods or services to:
  - The Ohio Department of Job and Family Services (ODJFS);
  - Any county department of job and family services (CDJFS);
  - Any public children's services agency (PCSA);
  - Any child support enforcement agency (CSEA);
  - Any workforce development agency; and
  - Any one-stop agency.
- Solicit or accept employment from anyone doing business with any of the foregoing agencies unless the officer, employee or agent completely withdraws, with the approval of [insert name of current employer agency], from all activities of the agency regarding the party offering employment.

Officers, employees and agents of [insert county name] CDJFS/CSEA/PCSA and their immediate family members and business associates are prohibited from voting, authorizing, recommending or in any other way using their position to secure approval of a [insert county name] CDJFS/CSEA/PCSA contract or purchase in which the officer, employee, a member of their immediate family, or anyone with whom they have a business or employment relationship, has an interest.

Officers, employees and agents of [insert county name] CDJFS/CSEA/PCSA and their immediate family members and business associates are prohibited from benefiting from any contract or purchase authorized or approved by [insert county name] CDJFS/CSEA/PCSA unless all criteria set forth in Section 2921.42, Revised Code, are met.

Officers, employees and agents of the [insert county name] CDJFS/CSEA/PCSA may not act in a representative capacity, in any manner, before a public agency on behalf of any contractor or other person on any matter in which the employee personally participated through decision, approval, disapproval, recommendation or other substantial exercise of administrative discretion.

<u>Contract/Vendor Restrictions</u> - No contractor, individual, company or organization seeking a contract or seeking to sell goods or services to [insert county name] CDJFS/CSEA/PCSA will promise or give to any agency officer, employee or agent anything of value, including employment or promise of employment within the scope of his or her job duties. No contractor or individual, company or organization seeking a contract or grant or seeking to sell goods or services to [insert county name] CDJFS/CSEA/PCSA will ask an officer, employee or agent of the agency to violate any of the code of standards of conduct requirements. Contractors acting on behalf of [insert county name] CDJFS/CSEA/PCSA will refrain from activities which could result in violations of this rule.

All [insert county name] CDJFS/CSEA/PCSA contracts shall contain provisions requiring the contractor to refrain from promising or giving to any agency officer, employee, or agent anything of value that is of such a character as to manifest a substantial and improper influence upon the officer, employee, or agent with respect to the officer's, employee's, or agent's duties, to agree that it will not solicit agency officers,

employees, or agents to violate the agency's code of standards of conduct or Sections 102.03, 102.04, 2921.42 or 2921.43, Revised Code, and to refrain from conflicts of interest, whether direct or indirect.

All contacts of the [insert county name] CDJFS/CSEA/PCSA shall include a certification by the contractor that it is in compliance with and will maintain compliance with the requirements of sections 102.03, 102.04, 2921.42, and 2921.43 of the Revised Code and the portions of the [insert county name] CDJFS/CSEA/PCSA code of standards of conduct applicable to contractors, and that the contractor will promptly notify the [insert county name] CDJFS/CSEA/PCSA of any newly arising conflicts of interest or potential violations of state ethics laws.

Consequences - Officers, employees, and agents of [insert county name] CDJFS/CSEA/PCSA and contractors in violation of Sections 102.03, 102.04, 2921.42 or 2921.43, Revised Code, may be prosecuted for criminal violations. Any contractor who violates the requirements of this code of conduct or of Sections 102.03, 102.04, 2921.42 or 2921.43, Revised Code, is subject to having the related contract terminated or having the [insert agency name] refuse to enter into a contract. The [insert county name] CDJFS/CSEA/PCSA will enforce the requirements contained in this written code of standards of conduct with penalties, sanctions, or disciplinary actions, including suspension or removal, when an agency officer, employee, agent or contractor violates the code of standards of conduct.

The signature of any [insert county name] CDJFS/CSEA/PCSA officer, employee or agent on a requisition, invoice, or other document requesting or approving the purchase of or payment for purchases of goods or services shall be considered to be a certification of compliance with the requirements and prohibitions of this plan.

Section III – Open and Free Competition

Except as to Title IV-D contracts with governmental entities (see Section XX, below), procurement of goods and services must be conducted in a manner that provides maximum open and free competition for every purchase sought. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 45 CFR 92.36 (HHS), 29 CFR Section 97.36 (DOL), and 7 CFR 3016.36 (USDA). Where no competition exists or it is not prudent to solicit competitive bids, a determination must be made and documented explaining why the lack of competition was necessary and reasonable. Situations restrictive to open and free competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Non-competitive pricing practices between firms or between affiliated companies;
- Non-competitive awards to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a "brand name" product instead of allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

All procurements, regardless of the procurement method used, must include:

- A clear and accurate description of the technical requirements to be procured. The description may not contain features which unduly restrict competition. It may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, set forth the minimum essential characteristics and standards to which it must conform to satisfy its intended use. Detailed products specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by bidders must be clearly stated;

- Identify all requirements that vendor must fulfill and all other factors to be used in the selection evaluation;

- Officers, employees and agents of [insert county name] CDJFS/CSEA/PCSA must ensure that all pre-qualified lists of persons, firms or products used in acquiring goods and services are current and included enough qualified sources to ensure maximum open and free competition. Officers, employees and agents of the agency may not preclude potential bidders from qualifying during the solicitation period;

- All proposed procurements must be reviewed by agency management to avoid purchase of unnecessary or duplicative items. Performance of this review must be documented and maintained in the procurement file.

Section IV - Equal Opportunity

Federal and state procurement standards require that small and minority-owned business be given every opportunity to compete equally with other businesses, including making special efforts to solicit bids and proposals from such firms. However, favored treatment in authorizing contracts is not allowed.

[insert county name] CDJFS/CSEA/PCSA officers, employees, and agents shall make efforts to utilize small, minority and women’s business enterprises and labor surplus area firms when they are potential resources for supplies, equipment, construction, and services as established in 7 CFR 3016.36; 45 CFR 92.36; and 29 CFR 97.36. Preference for such otherwise qualified contractors may be given, for example, by selecting the disadvantaged organization in the case of tie bids and setting certain conditions under which such contractors will be encouraged to bid. These conditions may include:

- Placing qualified small and minority businesses, and women's business enterprises on solicitation lists, and assuring that those businesses are solicited whenever they are potential resources;

- Dividing total requirements into small tasks or quantities to permit maximum small and minority businesses and women's business enterprises participation when economically feasible. When tasks are divided to allow small businesses and women's business enterprises to compete, the separation cannot be done to avoid competitive bidding requirements;

- Establishing delivery schedules which will encourage participation by small and minority businesses, and women's business enterprises where the requirement permits;

- Using the services and assistance of the United States Small Business Administration, the Office of Minority Business Development Agency of the U.S. Department of Commerce, the Community Services Administration, and other entities, as appropriate;

- Requiring the prime contractor to take affirmative steps as listed in paragraphs (A) to (E) of this rule if any subcontracts are to be let; and

- Encourage contracting with consortiums of small business and minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

Section V - Methods of Procurement

[insert county name] CDJFS/CSEA/PCSA shall use one of four methods of procurement when purchasing supplies, equipment, and services:

- Small purchase procedures;

- Competitive sealed bids;

- Competitive proposals; and

- Noncompetitive proposals (sole source).

A. Small Purchase Procedures

The small purchase procedures method of procurement will be used:

- When making relatively simple and informal purchases where price is the overriding factor and which involve standardized products or services (e.g. office equipment and supplies) costing in the aggregate not more than [insert threshold amount; **may not exceed $100,000 for purchases with federal monies]** annually. Such procurements shall be effected by obtaining price or rate quotations from an adequate number of qualified sources, but not less than three sources; and

- For relatively simple and straightforward purchases which do not cost more than the small purchase threshold, where price is not the overriding factor and where relative quality and performance must be evaluated (e.g. consultant services). Such procurements shall be effected by obtaining proposals from an adequate number of qualified sources, but not less than three sources.

The splitting of purchases that exceed the small purchase limit into several small purchases merely to be able to use the small purchase method is prohibited. Such split purchases will be considered unauthorized and disallowed.

The [insert name of agency office or unit] shall maintain a list of qualified sources from which to solicit proposals. The list shall include qualified sources which have expressed an interest in providing products or services to [insert county name] CDJFS/CSEA/PCSA.

For each procurement using small purchase procedures, an authorized officer, employee or agent of the [insert county name] CDJFS/CSEA/PCSA must evaluate the quotations obtained and determine the successful vendor. The officer, employee or agent performing the evaluation must summarize the

evaluation factors used and their relative importance. The procurement must be made from the responsible source whose quotation is most advantageous to the program, with price and other factors considered.

Price quotations need not be obtained for emergency purchases for services to children in care or for emergency services to families served. Other emergencies determined on a one-time basis by the agency director may be exempted from the requirement for price quotations. Where a purchase is made on the basis of such a determination, a written record of the circumstances justifying the determination must be maintained. Although such purchases are below the threshold amount of [insert relevant threshold amount; **may not exceed $100,000 for purchases with federal monies]**, they may be made as "noncompetitive proposal" or "sole source" procurements due to their emergency nature. (See the section on "Noncompetitive Proposal," for more details.)

Where the purchase of a specific class of goods or services using small purchases is reasonably foreseeable, [insert county name] CDJFS/CSEA/PCSA will ensure that at least three suppliers are contacted on an annual basis to assess purchase costs, and, taking into account delivery time, administrative exigency, transportation costs and product availability. When all factors appear equal, [insert county name] CDJFS/CSEA/PCSA will utilize all suppliers on an equitable basis.

Where practicable, purchases pursuant to small purchase procedures must be documented using the form set forth in Appendix C.

B. Competitive Sealed Bidding/Formal Advertising

Competitive sealed bidding, also known as formal advertising, is the method of procurement used when all the following conditions exist:

- Procurement lends itself to a firm fixed price contract;
- Two or more responsible suppliers are willing and able to compete effectively.
- The item or service can be supplied by the vendor;
- The selection of the successful bidder can be made principally on the basis of price; and
- A complete, adequate, and realistic specifications or purchase description is available, e.g. the Invitation to Bid (ITB).

Where this method of procurement is used, county policy requires:

- Where the cost is in excess of the small purchase procedure threshold, competitive sealed bidding/formal advertising must be used unless it is determined by the agency not to be practical or feasible. For the use of this method to be feasible, the five conditions noted above must be met;
- An invitation to bid (ITB) must be publicly advertised and bids solicited from an adequate number of known suppliers, providing them with sufficient time prior to the date for opening of the bids;
- The ITB must include specifications and pertinent attachments, defining the items or services in order for bidders to properly respond;

- Bids must be publicly opened at the time and place prescribed in the ITB; and

- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken.

Any or all bids may be rejected if there is a sound documented reason.

C. Competitive Proposal/Negotiation

Competitive proposals shall be used where conditions are not appropriate for the use of competitive sealed bids, small purchase procedures or noncompetitive proposals.

A competitive proposal process is normally conducted with more than one source submitting an offer, either a fixed price or cost reimbursement type contract is awarded, and the following conditions met:

- The complex and technical nature of the procurement cannot be described in bid specifications; and

- It is logical to award a contract on factors other than price.

This process of conducting competitive proposals is similar to conducting competitive sealed bidding and includes:

- Proposals must include a clear and accurate description of technical requirements for the material, product, or service to be procured. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of technical requirements, a brand name or equal description may be used as means to define performance or other conspicuous requirements. Specific features of the brand name must be clearly stated;

- Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The RFP must be publicized and reasonable requests by other sources to complete will be honored to the maximum extended practicable;

- The RFP must identify all significant evaluation factors, including price or cost where required, and their relative importance;

- The agency shall provide mechanisms for technical evaluation of the proposals received, determinations of reasonable proposers for the purpose of written or oral discussions, and selection for award;

- The award may be made to the responsible vendor whose proposal will be most advantageous to the [insert county name] CDJFS/CSEA/PCSA, price and other factors considered. Unsuccessful vendors shall be notified promptly; and

- The agency may use competitive proposal procedures for qualifications based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subjected to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services even if A/E firms are potential source to perform the proposed effort.

D. Noncompetitive Proposal - General

The noncompetitive proposal process may be used only when the award of a contract is infeasible under small purchase procedure, competitive sealed bidding or competitive proposals and **one or more** of the following conditions exist:

- Only one source of the product or service exists;

- The public exigency or emergency will not permit the delay which would result from competitive solicitation;

- After solicitation of a number of sources, a determination is made that competition is inadequate. This includes circumstances where no acceptable bids have been received after an attempt to used competitive sealed bidding/formal advertising or no acceptable proposals have been received after an attempt to use competitive proposals/negotiation;

- The purchases are for equipment or services where the prices are established by law for technical equipment requiring standardization and interchange ability of parts with existing equipment; or

- ODJFS authorizes noncompetitive proposals.

A written justification must be prepared to show why a competitive procurement methodology (small purchase procedures, competitive sealed bids, or competitive proposal/negotiation) was not used.

In the absence of an emergency, documentation must be maintained of any attempts to solicit competition. Such documentation must include:

- A copy of any public advertisement;

- A list of providers contacted;

- Copies of all letters received from prospective bidders or proposers, including those indicating a lack of interest in competing for the contract;

- Cost analysis, the projections of the data, and the evaluation of the specific elements of costs and profit. Independent estimates must be made before receiving bids or proposals; and

- Any other materials which would justify use of noncompetitive procurement.

Noncompetitive proposals require the mutual discussion and arrangement of terms of a transaction or agreement for the purpose of arriving at a common understanding of contract essentials such as technical requirements, schedules, prices, and terms.

E. Noncompetitive Proposals - Foster care purchases and child welfare service purchases

Purchases of services made by [insert county name] PCSA in the discharge of its duties under Chapter 5153, Revised Code, including services on behalf of a child in the custody of the agency and purchases made pursuant to rule 5101:2-47-23.1 of the Administrative Code, are considered noncompetitive proposals as specified in paragraph (E) of 5101:9-4-07, OAC, when they are purchased from a vendor that can best meet the service need presented and this is affirmatively documented by the agency on a case-by-case basis. Where there are similar vendors in close proximity providing substantially similar services, and who are equally qualified to meet the service need presented, the [insert agency name] must document that the process of awarding the contract to the vendor was done in a manner that demonstrates that the comparative cost of the vendors has been evaluated.

[insert agency name] may not establish an exclusive relationship with a services vendor to the exclusion of all other service vendors unless agency staff can document the reasons for the single source relationship with the service vendor. This documentation must include a demonstration that the service vendor is qualified to meet the needs of all children and families who will receive services from the vendor and must also provide assurances that no child or family will be denied services due to the single source nature of the relationship with the service vendor.

Purchases of goods or services by the [insert agency name], including purchase of child welfare services benefiting children and families but which are not purchased in response to a specific case need, remain subject to the general procurement requirements established by this plan and may be procured by noncompetitive proposals only subject to the general requirements for noncompetitive proposals set forth above.

Section VI – General Requirements

A. Contract cost and price analysis

Either a cost or a price analysis must be performed in connection with every procurement action, including contract modification. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

A cost analysis must be performed when the bidder is required to submit the elements of the estimate cost, e.g. under professional consulting and architectural engineering services contract. A cost analysis is also required when adequate price competition is lacking, and for sole source procurements, including procurements on the basis of catalog or market price of commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

When appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. Breaking out procurements should only be done to obtain a more economical price, and may not to be done to avoid procedural requirements.

[insert county name] CDJFS/CSEA/PCSA officers, employees and agents must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed, except that government entities are prohibited by law from receiving a profit. To

establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne, by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles. Grantees may reference their own cost principles that comply with the applicable federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

B. Interagency Agreements

Contracts funded in whole or part with federal funds and which are entered into by [insert county name] CDJFS/CSEA/PCSA with another county family services agency or workforce development agency within the county or workforce development area are not subject to the requirements contained in Section V-A through V-D and Section VI-A of this plan, providing that such contracts are documented with either a memorandum of understanding or interagency agreement between the entities.

C. General Procedural Requirements

The following general procedural requirements are applicable to all procurements:

- State purchasing contracts - Purchases made by [insert county name] CDJFS/CSEA/PCSA through state purchasing contracts which meet all of the requirements contained in Section 125.04, Revised Code, are not subject to the requirements contained in Section V-A through V-D and Section VI-A of this plan. State term contracts should not be confused with state term schedules, which are non-competitive schedules of products or services and should be treated only as a pre-qualified vendor list.

    - In order to participate in state purchasing contracts, a certified copy of a resolution by the board of county commissioners must be filed with the department of administrative services (DAS) office of state purchasing. The resolution must request that the agency be authorized to participate in the purchasing contracts, agree that the agency is bound by terms and conditions set by DAS, and agree that the agency will directly pay the vendor under each purchase contract.

    - [insert county name] CDJFS/CSEA/PCSA cannot access state purchasing contracts when competitive bidding by the county has already occurred unless the state purchasing contract has the same terms, conditions, and specifications at a lower price. [insert county name] CDJFS/CSEA/PCSA may also use the price contained in a state purchasing contract in other competitive selection procedures performed pursuant to this rule.

- Geographic preference - For purchases made in whole or in part with federal funds, or with state or local funds required for match, officers, employees and agents of [insert county name] CDJFS/CSEA/PCSA will conduct procurement in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage

geographic preference.

Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms given the nature and size of the project, to compete for the contract.

When only state and/or local funds are used for a purchase, the Board of County Commissioners may, by resolution, adopt the model system of preferences for products mined or produced in Ohio and for Ohio-based contractors (formerly "Buy-Ohio"). The resolution shall specify the class or classes of contracts to which the system of preferences apply. While the system of preferences is in effect, no officer, employee or agent of the [insert county name] CDJFS/CSEA/PCSA may award a contract in violation of the preference system.

- Non-profit and for-profit subgrantees – Officers, employees and agents of [insert county name] CDJFS/CSEA/PCSA shall inform subgrantees of applicable procurement requirements in any agreement used in awarding the grant. The agreement shall contain reference to the applicable federal procurement requirements. The applicable procurement requirements for subgrants awarding Department of Labor (DOL) monies to non-profit and for-profit organizations are located in 29 CFR. 95.40 - 95.46. The applicable procurement requirements for sub-grants awarding Health and Human Services (HHS) monies to non-profit and for-profit organizations are located in 45 C.F.R. 74.41-74.48.

- Non-Profit Agencies for Persons with Severe Disabilities - Before determining which method of procurement to use, [insert county name] CDJFS/CSEA/PCSA officers, employees, and agents must determine whether a product or service is on the procurement list for products and services provided by persons with severe disabilities in Section 4115.33, Revised Code. If the product or service is on the procurement list and is available within the period required by the agency, the agency must procure the product or service at the price established by the State Use Committee from a qualified nonprofit agency. If the provision of the product or service cannot be made in either the time period required or in the amount specified by the agency, the agency may pursue the procedures outlined in Chapter 5101:9-4 of the Ohio Administrative Code.

Section VII – Required Contract Provisions

Contracts must contain sufficient provisions to define a sound and complete agreement. The same provisions must also apply to subcontracts. The following provisions must be included in all contracts and subcontracts. In some cases, the monetary value of the contract will affect whether the particular provision must be included in the contract agreement.

- Administrative Remedies for Violations - For all written contracts, the contract must contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms. The contract must also provide for remedial actions (i.e., sanctions and penalties) as appropriate;

- Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60;

- Patent/Copyright - The contract shall include notice of awarding agency requirements and regulations pertaining to:

    - Patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract; and
    - Copyrights and rights in data;

- Records Access - All contracts awarded shall include a provision that the federal/state/county agencies (ODJFS, the county family services agency and workforce development agency, and the federal grantor agency), the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, and transcriptions;

- Records Retention - Financial, programmatic, statistical, recipient records and supporting documents must be retained for a minimum of three years after the ODJFS acceptance of the final closeout expenditure report, or as otherwise provided by any minimum retention requirements specified by applicable state or federal law. If any litigation, claim, negotiation, audit or other action involving the records has started before the expiration of the three year period, the records must be retained until the completion of the action and resolution of all issues that arise from it, or until the end of the regular three year period, whichever is later;

- Termination Provisions - Any contract in excess of ten thousand dollars ($10,000) shall contain provisions for termination by the agency awarding the contract, including how to complete a termination and the basis for settlement;

- Davis-Bacon - Contracts for construction must require compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7, Public Law 74-403, as supplemented by Department of Labor regulations (29 CFR Part 5);

- Contract Work Hours and Safety Standards Act - Contracts shall include a provision for compliance with sections 103 and 107 of the Contract Work hours and Safety Standards Act (40 U.S.C. 327 through 330 as supplemented by Department of Labor regulations (29 CFR part 5);

- Anti-Kickback Act - Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in department of labor regulations (29 C.F.R. Part 3);

- Reporting - Notice of awarding agency requirements and regulations pertaining to reporting;

- Clean Water Act/Clear Air Act - Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and environmental protection agency regulations (40 C.F.R. part 15); and

- Energy Policy and Conservation Act - Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Section VIII – Title IV-D Service Contracts

A. General

CDJFS/CSEA/PCSAs are authorized by Sections 3525.13 through 3525.141, Revised Code, and OAC Sections 5101:12-1-80 through 5101:12-1-804, to enter into contracts with governmental or private entities to obtain necessary services for child support enforcement activities.

B. Governmental Entities

Where proposed Title IV-D service contracts are to be with governmental entities, there is no requirement for competitive procurement. The [insert county name] CDJFS/CSEA/PCSA will, however, comply with all applicable requirements of federal and state statute, federal regulation, and state administrative rule, in the contracting process.

Section IX - Record Keeping

The [insert county name] CDJFS/CSEA/PCSA will maintain pertinent records regarding all procurements. The size and type of procurement will determine the type of information recorded and maintained in file. Records of very small purchases not formally advertised will include the name of the vendor, itemized list of items purchased, the total cost, the date of purchase and the grant project to which the expense was charged. For larger purchase requiring more complex procurement methods, records will be retained to document the following when applicable:

- Rationale for the method of procurement;
- Copies of published advertisements for bids or proposals;
- Copies of all respondent's replies;
- Selection of the contract type;
- Basis of contractor selection or rejection;
- Basis for the cost or price;
- Copies of letters sent to known providers advising them of the goods and services sought;
- Identification of date, time and place bids or proposals were opened; and
- Proof of prior approval when required.

In cases of non-emergency, noncompetitive proposals, the agency must maintain documentation of its attempts to solicit competition. Such documentation must include the following items:

- A copy of the public advertisement;
- A list of providers contacted;

- Copies of all letters received from prospective bidders or respondents, including those indicating a bidder's lack of interest in competing for the contract;

- Cost analysis, i.e. verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit. Independent estimates must be made before receiving bids or proposals; and

- Any other materials which would justify the agency's use of noncompetitive methods.

Section X - Monitoring

It is the policy of the [insert county name] CDJFS/CSEA/PCSA to closely monitor all contracts to ensure compliance with all terms, conditions and specifications. The Director or designee is responsible for monitoring. The monitoring process will involve careful review of contract terms prior to finalizing the agreement. In agreements providing for the delivery of supplies, equipment, or materials, such items will be carefully checked and counted prior to acceptance. Legal disputes arising out of contracted procurements will be referred to the County Prosecuting Attorney if efforts to resolve the problem at the agency level are unsuccessful.

Section XI - General

Before purchasing any equipment, due consideration will be given to lease, rental, and purchase alternatives to determine, consistent with prudent business judgment, which would be the most economical and practical procurements. In making this determination, due consideration will be given to useful life of the equipment to the program for which it is being purchased, technology obsolescence, maintenance considerations, purchase price versus lease or rental cost and any other matters considered by management to be warranted under the circumstances.

All procurements large and small will be reviewed and approved by the Director or his designee. The [insert county name] County Board of Commissioners, in regular session, will authorize payment of all vouchers. All vouchers and invoices will then be forwarded to the County Auditor for final approval and payment. These efforts are employed to avoid improper or unnecessary payments and to assure all provisions of local, state and federal law are followed. No purchases or delivery of items, except in an emergency situation, are authorized before a signed and approved Purchase Order is completed.

_____
[insert director's name], Director
[insert county name] County Department of Job and Family Services/Child Support Enforcement Agency/Public Children Services Agency

_____, Commissioner

_____, Commissioner

_____, Commissioner

Approved: [insert county name] County Board of County Commissioners

_____

Approved: Office of the Prosecuting Attorney,
[insert county name] County

Appendix A

Definitions

(1) “Acquisition cost” – net invoice price of item including the cost of delivery, installations, modifications, attachments, accessories, or auxiliary apparatus necessary to make the item usable for the purpose for which it is acquired, regardless of whether purchased together or separately. For an item acquired by trading in another item and paying an additional amount, the acquisition cost is the amount received for the trade-in plus the additional outlay.

(2) “Aggregate procurement” – the total amount of small purchases made from a single vendor for one contract.

(3) “Asset” – buildings, capital improvements, and equipment.

(4) “Code of conduct” – standards governing conduct of employees involved in the procurement process.

(5) “Competitive sealed bidding” – methods that include competitive sealed bidding requirements referenced in paragraph (C) of rule 5101:9-4-07 of the Administrative Code.

(6) “Cost analysis” – the review and evaluation of the separate cost elements and the application of judgment to determine how well the proposed costs represent what the cost should be, assuming reasonable economy and efficiency. Comparisons should be with actual costs previously incurred by the same supplier; previous cost estimates for the same or similar items; other cost estimates received in response to the solicitation; independent cost estimates by technical personnel; or forecasts of planned expenditures.

(7) “County family services agency” – means the county department of job and family services (CDJFS/CSEA/PCSA), child support enforcement agency (CSEA), public children services agency (PCSA), whether or not the county family services agency is included in a fiscal agreement entered into between the Ohio department of job and family services (ODJFS) and the county commissioners board pursuant to section 5101.21 of the Revised Code. County family services agency also means any private or government entity designated by the board of county commissioners to serve as a county family services agency.

(8) “Equipment” – tangible personal property that has a useful life of more than one year and an acquisition cost of five thousand dollars or more, except that counties may adopt an acquisition cost limit lower than five thousand dollars.

(9) “Expensing” – method of allocating the cost of an asset to the period it is acquired for purposes of federal and/or state reimbursement.

(10) “Facilities” – land and buildings or any portion thereof; equipment, either in individual pieces or pieces aggregated for a common purpose; and any other tangible capital asset.

(11) “Invitation to Bid” (ITB) – The acquisition process used by county family services agencies to solicit competitive sealed bids from vendors.

(12) “Maintenance” – expenditures for services or items that keep assets in an efficient operating condition, do not add to the asset’s permanent value, and are not already included in a rental agreement or other charges for space. Repair work to an agency building which adds to the permanent value of the property or appreciably prolongs its intended life is a capital improvement and is not considered maintenance.

(13) Non-profit organization as defined in OMB “Circular A-133” is as follows.

(a) Any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations;

(b) The term non-profit organization includes non-profit institutions of higher education and hospitals.

(14) “Price analysis” – the process of examining, evaluating and comparing a proposed price to determine if it is fair and reasonable, without evaluating its separate cost elements. Comparison should be with other prices and quotations submitted; published catalog or market prices; prices set by law or regulation; prices for the same or similar items; prior quotations for the same or similar items; market data (indexes); or other standardized data.

(15) “Purchasing or procurement contract” – the agreement by which the vendor and the government agency bind themselves to the terms of a purchase or purchases.

(16) “Purchase order” – encumbering document used for all contracts to put into effect the prior certification of funds under division (D) of section 5705.41 of the Revised Code.

(17) “Service contract” – the contract by which the entity providing the service and the agency bind themselves to the terms of a service agreement for the purchase of services.

(18) “Sub-grant” – an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible sub-grantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

(19) “Sub-grantee” – the government or other legal entity to which a sub-grant is awarded and which is accountable to the grantee for the use of the funds provided as defined in 7 C.F.R. 3016.36, 29 C.F.R. 97, and 45 C.F.R. 92.

(20) “Sub-recipient” – for the purpose of Chapter 5101:9-4 of the Administrative Code, sub-recipient means a non-federal entity that expends federal awards from a contract or grant agreement with either a county family services agency, a local area for workforce investment responsibilities as defined in section 6301.01 of the Revised Code, or a workforce development agency functioning as a pass through entity to carry out a federal program, but does not include

an individual that is a beneficiary of such a program.

(21) “Supplies” – items consumed in the county family services agency and workforce development agency operations which do not fit the definition of equipment.

(22) “Use allowance” – method of allocating the cost of an asset in lieu of depreciation for purposes of federal and/or state reimbursement.

(23) “Useful life” – the period of time over which an asset is depreciated, which is determined by taking into consideration the type of construction, the nature of the equipment used, historical usage patterns, technological developments, and manufacturer documentation.

(24) “Vendor” – a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization’s own use or for the use of beneficiaries of the federal program.

(25) “Workforce development agency” – the entity given responsibility for workforce development activities that is designated by the board of county commissioners in accordance with section 330.04 of the Revised Code, the chief elected official of a municipal corporation in accordance with section 763.05 of the Revised Code, or the chief elected officials of a local area.

Appendix B

Ohio Ethics Law Provisions

102.03 Representation by present or former public official or employee prohibited.

(A)(1) No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(2) For twenty-four months after the conclusion of service, no former commissioner or attorney examiner of the public utilities commission shall represent a public utility, as defined in section 4905.02 of the Revised Code, or act in a representative capacity on behalf of such a utility before any state board, commission, or agency.

(3) For twenty-four months after the conclusion of employment or service, no former public official or employee who personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, the development or adoption of solid waste management plans, investigation, inspection, or other substantial exercise of administrative discretion under Chapter 343. or 3734. of the Revised Code shall represent a person who is the owner or operator of a facility, as defined in section 3734.01 of the Revised Code, or who is an applicant for a permit or license for a facility under that chapter, on any matter in which the public official or employee personally participated as a public official or employee.

(4) For a period of one year after the conclusion of employment or service as a member or employee of the general assembly, no former member or employee of the general assembly shall represent, or act in a representative capacity for, any person on any matter before the general assembly, any committee of the general assembly, or the controlling board. Division (A)(4) of this section does not apply to or affect a person who separates from service with the general assembly on or before December 31, 1995. As used in division (A)(4) of this section “person” does not include any state agency or political subdivision of the state.

(5) As used in divisions (A)(1), (2), and (3) of this section, “matter” includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in division (A)(4) of this section, “matter” includes the proposal, consideration, or enactment of statutes, resolutions, or constitutional amendments. As used in division (A) of this section, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person.

(6) Nothing contained in division (A) of this section shall prohibit, during such period, a former

public official or employee from being retained or employed to represent, assist, or act in a representative capacity for the public agency by which the public official or employee was employed or on which the public official or employee served.

(7) Division (A) of this section shall not be construed to prohibit the performance of ministerial functions, including, but not limited to, the filing or amendment of tax returns, applications for permits and licenses, incorporation papers, and other similar documents.

(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

(C) No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or immediate family owns or controls more than five per cent. No public official or employee shall participate within the scope of duties as a public official or employee, except through ministerial functions as defined in division (A) of this section, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or employee or immediate family, or a partnership, trust, business trust, corporation, or association of which the public official or employee or the public official's or employee's immediate family owns or controls more than five per cent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or employee has filed a written statement acknowledging that sale with the clerk or secretary of the public agency and the statement is entered in any public record of the agency's proceedings. This division shall not be construed to require the disclosure of clients of attorneys or persons licensed under section 4732.12 or 4732.15 of the Revised Code, or patients of persons certified under section 4731.14 of the Revised Code.

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(G) In the absence of bribery or another offense under the Revised Code or a purpose to defraud,

contributions made to a campaign committee, political party, legislative campaign fund, political action committee, or political contributing entity on behalf of an elected public officer or other public official or employee who seeks elective office shall be considered to accrue ordinarily to the public official or employee for the purposes of divisions (D), (E), and (F) of this section.

As used in this division, “contributions,” “campaign committee,” “political party,” “legislative campaign fund,” “political action committee,” and “political contributing entity” have the same meanings as in section 3517.01 of the Revised Code.

(H)(1) No public official or employee, except for the president or other chief administrative officer of or a member of a board of trustees of a state institution of higher education as defined in section 3345.011 of the Revised Code, who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from giving to that public official or employee the payment of actual travel expenses, including any expenses incurred in connection with the travel for lodging, and meals, food, and beverages provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or provided to the public official or employee at a meeting or convention of a national organization to which any state agency, including, but not limited to, any state legislative agency or state institution of higher education as defined in section 3345.011 of the Revised Code, pays membership dues. Except as provided in division (H)(2) of this section, this division and divisions (D), (E), and (F) of this section do not prohibit a public official or employee who is not required to file a financial disclosure statement under section 102.02 of the Revised Code from accepting and do not prohibit a person from promising or giving to that public official or employee an honorarium or the payment of travel, meal, and lodging expenses if the honorarium, expenses, or both were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from public office or employment, including, but not limited to, such a demonstrable interest in public speaking and were not paid by any person or other entity, or by any representative or association of those persons or entities, that is regulated by, doing business with, or seeking to do business with the department, division, institution, board, commission, authority, bureau, or other instrumentality of the governmental entity with which the public official or employee serves.

(2) No person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds shall solicit or accept, and no person shall give to that board member, officer, or employee, payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages.

(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to official duties if the travel, meals, and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties. The house of

representatives and senate, in their code of ethics, and the Ohio ethics commission, under section 111.15 of the Revised Code, may adopt rules setting standards and conditions for the furnishing and acceptance of such travel, meals, and lodging, expenses, or reimbursement.

A person who acts in compliance with this division and any applicable rules adopted under it, or any applicable, similar rules adopted by the supreme court governing judicial officers and employees, does not violate division (D), (E), or (F) of this section. This division does not preclude any person from seeking an advisory opinion from the appropriate ethics commission under section 102.08 of the Revised Code.

(J) For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and improper influence on the public official or employee with respect to that person's duties. As used in this division, "organization" means a church or a religious, benevolent, fraternal, or professional organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use his official position with regard to the interests of the organization on the matter if the public official or employee has assumed a particular responsibility in the organization with respect to the matter or if the matter would affect that person's personal, pecuniary interests.

(K) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with division (B) of section 309.06 and section 2921.421 of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections 733.621 and 2921.421 of the Revised Code, for a township law director appointed under section 504.15 of the Revised Code to appoint assistants and employees in accordance with sections 504.151 and 2921.421 of the Revised Code, or for a coroner to appoint assistants and employees in accordance with division (B) of section 313.05 of the Revised Code.

As used in this division, "chief legal officer" has the same meaning as in section 733.621 of the Revised Code.

Effective Date: 09-05-2001; 09-15-2004; 03-31-2005; 04-26-2005

102.04 No compensation to elected or appointed state official other than from agency served.

(A) Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any

service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

(B) Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall sell or agree to sell, except through competitive bidding, any goods or services to the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

(C) Except as provided in division (D) of this section, no person who is elected or appointed to an office of or employed by a county, township, municipal corporation, or any other governmental entity, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is before any agency, department, board, bureau, commission, or other instrumentality, excluding the courts, of the entity of which he is an officer or employee.

(D) A public official who is appointed to a nonelective office or a public employee shall be exempted from division (A), (B), or (C) of this section if both of the following apply:

(1) The agency to which the official or employee wants to sell the goods or services, or before which the matter that involves the rendering of his services is pending, is an agency other than the one with which he serves;

(2) Prior to rendering the personal services or selling or agreeing to sell the goods or services, he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending or that is purchasing or has agreed to purchase goods or services.

The required statement shall contain the official's or employee's name and home address, the name and mailing address of the public agencies with which he serves and before which the matter is pending or that is purchasing or has agreed to purchase goods or services, and a brief description of the pending matter and of the personal services to be rendered or a brief description of the goods or services to be purchased. The statement shall also contain the public official's or employee's declaration that he disqualifies himself for a period of two years from any participation as such public official or employee in any matter involving any public official or employee of the agency before which the present matter is pending or to which goods or services are to be sold. The two-year period shall run from the date of the most recently filed statement regarding the agency before which the matter was pending or to which the goods or services were to be sold. No person shall be required to file statements under this division with the same public agency regarding a particular matter more than once in a calendar year.

(E) No public official or employee who files a statement or is required to file a statement under division (D) of this section shall knowingly fail to disqualify himself from any participation as a public official or employee of the agency with which he serves in any matter involving any

official or employee of an agency before which a matter for which he rendered personal services was pending or of a public agency that purchased or agreed to purchase goods or services.

(F) This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Effective Date: 10-20-1980

2921.42 Having an unlawful interest in a public contract.

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest;

(2) Authorize, or employ the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which the public official, a member of the public official's family, or any of the public official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;

(3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected;

(5) Have an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law and that involves more than one hundred fifty dollars.

(B) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family, or any of a public official's business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:

(1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested;

(2) The shares owned or controlled by that person do not exceed five per cent of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed five per cent of the total indebtedness of the corporation or other organization;

(3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving that person's exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Division (A)(4) of this section does not prohibit participation by a public employee in any housing program funded by public moneys if the public employee otherwise qualifies for the program and does not use the authority or influence of the public employee's office or employment to secure benefits from the program and if the moneys are to be used on the primary residence of the public employee. Such participation does not constitute an unlawful interest in a public contract in violation of this section.

(E) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (2) of this section is a felony of the fourth degree. Violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree.

(F) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with sections 309.06 and 2921.421 of the Revised Code, for a chief legal officer of a municipal corporation or an official designated as prosecutor in a municipal corporation to appoint assistants and employees in accordance with sections 733.621 and 2921.421 of the Revised Code, or for a township law director appointed under section 504.15 of the Revised Code to appoint assistants and employees in accordance with sections 504.151 and 2921.421 of the Revised Code.

(G) This section does not apply to a public contract in which a township trustee in a township with a population of five thousand or less in its unincorporated area, a member of the township trustee's family, or one of the township trustee's business associates has an interest, if all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the township and the amount of the contract is less than five thousand dollars per year;

(2) The supplies or services are being furnished to the township as part of a continuing course of dealing established before the township trustee held that office with the township;

(3) The treatment accorded the township is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted with full knowledge by the township of the interest of the township trustee, member of the township trustee's family, or the township trustee's business associate.

(H) Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable. Any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of this section is void and unenforceable.

(I) As used in this section:

(1) "Public contract" means any of the following:

(a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either;

(b) A contract for the design, construction, alteration, repair, or maintenance of any public property.

(2) "Chief legal officer" has the same meaning as in section 733.621 of the Revised Code.

Effective Date: 06-23-1994; 2007 HB119 09-29-2007

2921.43 Soliciting or accepting improper compensation.

(A) No public servant shall knowingly solicit or accept, and no person shall knowingly promise or give to a public servant, either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(B) No public servant for the public servant's own personal or business use, and no person for the person's own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment, or position of trust in this state for a period of seven years from the date of conviction.

(F) Divisions (A), (B), and (C) of this section do not prohibit a person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity or prohibit a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity from accepting voluntary contributions.

Effective Date: 07-13-1998; 03-31-2005; 04-26-2005

Appendix C

Small Purchase Procedures Documentation Form

Description of Goods or Services to be Purchased (attach additional sheets if necessary):

Justification for Use of Small Purchase Procedures (attach additional sheets if necessary):

Evaluation Criteria to be Used in Selection (attach additional sheets if necessary):

Proposer Number 1:

Name:

Address:

Quoted Price:

Proposer Number 2:

Name:

Address:

Quoted Price:

Proposer Number 3:

Name:

Address:

Quoted Price:

Proposer Number 4:

Name:

Address:

Quoted Price:

Proposer Number 5:

Name:

Address:

Quoted Price:

Attached additional sheets if necessary; price quotations from a minimum of 3 proposers is required.

Name of Selected Proposer: Basis for Selection (attach additional sheets if necessary):

I attest that the selection of the proposer named above was made in accordance with the [insert agency name] Procurement Plan and applicable federal and state statutes, federal regulations, state administrative rules, and local policies. The selected proposer is a responsible source whose quotation is most advantageous to the program, with price and other factors considered, under the evaluation criteria specified above.

_____
Name

_____
Title/Position

_____
Date