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“I SURVIVED, because the fire inside me burned brighter than the fire around me.” ~ Joshua Graham

There is so much that can be said about the last 2 years, yet no words can describe what we have experienced and the level of resiliency required of us. Procurement professionals have truly walked through fire during the COVID Pandemic. I am constantly amazed at the strength I’ve witnessed in my entity and my peers. Please, take a moment to catch your breath and say, job well done to yourself and your staff.

2021 ETPA & TAPP Joint Fall Conference

Due to the uptick of COVID cases in our area, ETPA & TAPP’s leadership have decided to host the 2021 ETPA & TAPP Fall Professional Development Conference virtually. While our hope was to meet in person, our primary goal is to protect our membership making this a necessary decision. The Fall Conference schedule is posted on our website and in the newsletter. We have phenomenal speakers presenting relevant topics, we hope you will join us on October 28 & 29!

Stay Safe & Healthy!

Hazel
We are pleased to present to you the 2022 slate of officers and committee chairs. Thank you to our volunteers and everyone who helps make ETPA the fantastic organization that it is!

**Officers:**

President – Hazel Orick Gibson  
VP – Jolene Combs  
Secretary – Carol Maines  
Treasurer – Lynn Farnham

**Committee Chairs/Members:**

Newsletter – Nikisha Eichmann  
Recognition Committee Chair – Gina Leham  
Professional Development Committee Co-Chairs – Jackie Cooper & Valerie Harless  
Membership Committee Chair – Kris Davis  
Photographer & Social Media – Penny Owens  
Webmaster – Jolene Combs  
Golf Tournament Steering Committee Co-Chairs – Hugh Holt & Gina Leham  
Outreach to Other Professional Organizations – Dustin Shearin  
Diversity Focus Group Committee – Pamela Cotham & Karen Binkley  
Mentoring Committee Chair – Penny Owens  
Nominating Committee Chair – Michelle Ramey

We are still looking for the positions below to fill for the Leadership Team. Please contact Brent Morelock, City of Kingsport, Or Hazel Orick Gibson, Knoxville’s Community Development Corporation, if you are interested in filling these positions, we’d love to have you on the Leadership Team!

- **Fundraising Committee**  
The Fundraising Committee is a new committee developed to secure ETPA’s sustainability well into the future. The committee will be responsible for planning specific fundraising events and activities and researching non-profit grant opportunities. The goal is for the committee to consist of 3 – 4 members and serve a term of 2 years. If you are interested in research (as in grant opportunities) or planning exciting events, this committee is for you!

- **Strategic Planning Committee**  
The members of the Strategic Planning Committee will serve with ETPA’s Executive Board to set goals and develop a plan to achieve them. The SPC will also review ETPA’s mission and vision statements and adjust those as necessary. The overall goal of the SPC will be to develop 5-year plan based on current and future needs thus sustaining ETPA well into the future.
Global Best Practice

CONTRACT CLOSEOUT

This practice is directed to procurement professionals. However, there may be other stakeholders involved with the administration of the contract, each with various responsibilities for contract closeout. All stakeholders should be made aware of their responsibilities. Other stakeholders may include:

- Senior management, elected officials.
- End users.
- Government employees.
- Program staff, e.g., Small Business or Minority, Women, and Disadvantaged Business Enterprise (MWBE) Office.
- Another procurement entity.
- Supplier or Contractor.

STANDARD

Every contract requires contract closeout. The contract closeout process allows the entity and contractor to officially consider a contract closed. The simplest form of a contract closeout may be performed automatically and may not require a formal checklist to complete the process. Well-executed contract administration, including a complete and accurate procurement or contract file, is essential to successful contract closeout.

Definition

Contract Closeout: A final set of actions taken during the contract administration phase that establishes each party has fully satisfied its obligation to the other according to the contract. This includes the completion of all administrative actions, resolution of all disputes, and payment of all outstanding financial obligations.

Element 1: Start with the end in mind.

The procurement professional should consider closeout requirements throughout the procurement planning process, including:

- Ensuring the solicitation document and the resulting contract state assigned closeout roles and responsibilities and include contract closeout requirements, e.g., expected deliverables.
- Identifying potential scenarios for contract closeout.
- Developing a plan for contract closeout from the development of the solicitation through the resulting contract and contract administration phase.
- Identifying potential renewals or extensions of the contract and any financial obligations.
- Creating a checklist based on the contract to specify tasks and associated responsibilities for closeout.
Element 2: The success of contract closeout depends on accurate and thorough documentation in the contract file.

The contract file consists of a set of documents with accurate and pertinent information that must be retained throughout the contractual period. The acceptance of deliverables by the requisite entity authority should be documented and included in the contract file. The closeout document may include information that finalizes and releases both parties, i.e., lien release, from all legal and contractual obligations. The contract file will differ according to what is being procured and how it is being procured, and may include:

- Standard contracts.
- Amendments and change orders.
- Purchase orders.
- Price agreements.
- Requirements contracts.
- Receiving report.
- Plans, designs, specifications, and as-builts.

Element 3: Procurement, in collaboration with the client department, designated contract administrator, and other stakeholders, is responsible for ensuring contract closeout.

Primary roles and responsibilities of stakeholders during the contract closeout process may depend on the entity’s:

- Procurement policies.
- Operating procedures.
- Organizational structure, i.e., centralized, decentralized, hybrid.
- Organizational culture.
- Type and complexity of the contract.

In general:

- The procurement professional closes the contract file through:
  - Validation (of documentation and activities)
  - Confirmation (of performance, delivery, payment)
  - Delegation of roles and responsibility to complete contract closeout activities
  - Documentation of lessons learned

Contract closeout, for example, of a standard purchase order, may occur automatically, e.g., through an ERP validation feature or function.
Element 4: The procurement professional should consider factors that may impact the timing of and resources needed for contract closeout.

The procurement professional should review the contract to ensure that all open items are resolved. The time and level of effort to accomplish contract closeout depends on the complexity and dollar value of the contract.

For complex procurements, contract closeout may require a formal process, particularly for procurements involving capital projects and extensive service provisions. For routine procurements, contract closeout may consist of an automated process.

Complex procurements may include information technology, specialized equipment, construction services, or service contracts. The timing and resources needed for closeout of complex procurements may be impacted by:

- Type of construction project delivery method, e.g., Design-Build, Design-Bid-Build, Construction Manager at Risk, Alternate Construction Delivery Method.
- Number and type of stakeholders involved.
  - Contractors, sub-contractors, e.g., lien releases
  - Social service professionals, e.g., transitions of care and records
  - Boards, commissions, councils, e.g., approvals
- Required training of entity personnel during contract transition.
- Entity structure.
- Entity systems/processes.
  - Technology adoption
- Capability and capacity of the entity.
- Funding source, e.g., state, federal, or grants.
- Reporting requirements.
- Security/privacy issues
- Required exchange of personnel or surrender of equipment.
- Requirement for recurring services.
- Community outreach or feedback needed.
- Required notice of termination/expiration to internal clients and suppliers.
- Return of any unused encumbered funds.
- Release of retainage/bonds.
- Required documentation, e.g., reports, deliverables, written warranties, acceptance of deliverables, performance feedback.
- How a contract ends such as:
  - Anticipated, e.g., expected expiration at the end of contract term, transition to new contract (incumbent or new supplier)
  - Not anticipated, i.e., unexpected termination of the contract, e.g., default by current supplier
  - Termination for Cause
  - Termination for Convenience
Specific considerations for IT closeout include:

- Transfer of data to the entity, if required by the contract.
- Cancellation of access, withdrawal of permission, e.g., password changes.
- Access to, or copies of, confidential data or information.
- Ensuring that data is secure, e.g., deliberately, permanently, and irreversibly removing or destroying the data (media sanitization, i.e., NIST 800-88).
- Confirmation of existing systems for integrations impacted by contract.
- Verification of security and ownership of source code.

Specific considerations for construction closeout (before final payment) may include:

- Punch list completion.
- Subcontractor and supplier payments, i.e., lien releases.
- All relevant documentation, insurance, certificates, commissioning of project, warranties, as-builts.
- Confirmation that training has occurred.
- Confirmation that turnover of ownership and necessary documents have occurred.
- Release of retention.

Specific considerations for services may include:

- Removal of contractor access (building/network/passwords).
- Return of equipment/supplies (could be both parties).
- Transition between suppliers, e.g., does the current contractor need to train the new contractor?

Specific considerations for professional services may include:

- Client transition plan, i.e., personal handoff of mental health patients, justice-related clients, foster care.
  - Consideration for the individual’s circumstances, e.g., client’s access to services through transportation
  - Records, background checks, and access to buildings and systems
- Client sensitive data recovery/destruction plan.
- Communication plan (client/internal).
  - Use of local media
  - Update entity website and other public-facing communication
- Deliverables, written warranties, acceptance of deliverables, performance feedback.

Tips for contract closeout:

- Document contract performance and activity throughout the life of the contract.
- Begin contract closeout early enough to allow adequate time to develop a solicitation for a new contract.
Element 5: Successful closeout considers contract type, funding, special documentation, and other factors.

The utilization of a contract closeout checklist, which may include the following, is a best practice:

- Special considerations of contract closeout based on the type of contract, e.g., construction (punch out lists), goods, services, information technology (protect data), emergency management, and specific funding requirements, for example, Federal Emergency Management Agency (FEMA), Federal Transit Administration (FTA), The United States Department of Housing and Urban Development (HUD).
- Entity payment in full to contractors.
- Deobligation of all excess funds on the contract.
- Settlement of property rights to the satisfaction of all parties.
- Finalization of administrative actions.
  - Documentation and closure of all outstanding matters, including satisfactory performance, warranties, technical data requirements, and patents
  - Notice by Procurement to end users regarding the status of a contract, e.g., when a contract is due to terminate or when a new contract is in place

The following areas and questions should be considered in conjunction with closeout activities:

Administrative

- Is the contract file complete, and does it conform to regulations governing contract administration as specified by the public entity?
- If the contract file consists of multiple files, have they been sequentially numbered and identified?
- Does the contract file include the file of the contracting officer and the contracting officer’s representative?
- Did the contract specify a period of performance; and, if yes, has that period of performance ended?
- Are all file documents signed with original signatures? This includes invoices/vouchers, letters to the contractor, memoranda, official and correspondence.
- Is the deobligation of funds complete, if required?
- Are all change orders defined and included in the procurement file?
- Are all final determinations complete?
- Have all optional provisions expired?
- Are there any time extensions pending?
- Are all modification documents signed?

Deliverables

- Is the final receiving report signed and dated?
- Did the contracting officer representative certify that all deliverables have been received and accepted?
Payments and Invoices

- Are all disallowed payments, performance, deliverables, or suspended costs resolved?
- Is all reconciliation completed in conjunction with a financial report to verify that all payments have been paid?
- Have any refunds, rebates, or credits been annotated in the procurement file?
- Are all excess funds, such as unliquidated obligations, verified, and submitted to the Finance Department?

Property

- Has the property inventory been received from the contractor?
- Has there been an accounting of all entity-owned property, real or personal, either furnished by the entity or acquired by the contractor for the account of the entity?
- Has appropriate disposal action been taken upon physical completion of the contract/delivery order?
- Has there been a final disposition of entity-furnished property?

Element 6: Tools and activities are useful in conducting the contract closeout process.

When conducting a contract closeout, the following tools or activities may be used:

- Guidance, e.g., training, meeting, or physical guide stating expectations to suppliers, clients, and other stakeholders
- A checklist for contract file documentation, e.g., amendments, contractor performance, non-disclosure statements
- Stakeholder engagement, i.e., bring stakeholders together to review contract performance to elicit feedback and extract lessons learned, e.g., emergency management
- Project management tools, e.g., RACI (responsible, accountable, consulted, and informed) may be used as a separate project management tool
- Contract or document management software system

Background

Contract closeouts should be conducted to verify all contractual obligations are completed and documented. Because contract closeout is the final set of actions during the contract administration phase, it can also be used to evaluate the contract and contractor/supplier performance, providing feedback and lessons learned for establishing a new contract.

At the onset of the procurement planning process for goods and services, it is important to identify contract closeout expectations and responsibilities of all stakeholders, including end users and suppliers.

Lack of planning for contract closeout can lead to negative consequences such as improper access to confidential data and systems by the former contractor or its subcontractors.
References


- NIGP Global Best Practice, Strategic Procurement Planning, 2012.


Global Best Practice

NEGOTIATION

Note: Application of guidance in public procurement practices will depend on the laws, procurement codes, ordinances, trade agreements, and policies of each entity.

STANDARD

Negotiation, whether simple or complex, requires planning. Negotiation in a competitive environment begins with the establishment of policies and procedures consistent with relevant procurement legislation. Laws, procurement type and complexity, level of risk, and other factors will determine how negotiations should be conducted. Procurement should develop a negotiation strategy based on the project’s required and desired outcomes in alignment with entity goals. Integrative (win-win, interest-based) negotiation is best practice in public procurement.

Definition

Negotiation: A process of planning, reviewing, analyzing, and conferring used by two or more parties to reach a mutually acceptable agreement in a contracting relationship.

Note: This practice is presented in two parts. SECTION 1 covers THEORY and SECTION 2 covers PROCESS. Element numbering will reflect this division.

INTRODUCTION

Negotiations in public procurement occur in various contexts. Negotiation is used when obtaining funding and resources, and working in an environment where competing interests are involved. Negotiation is also a fundamental function of sourcing and contract administration. Procurement professionals should keep the desired outcomes in mind when first drafting plans or strategy for use in the negotiation process. The successful outcome of a negotiation, once negotiation policies and procedures have been established, is dependent upon planning, process design and execution, decisions, actions, and inactions. All aspects of a negotiation may be subject to public scrutiny.

A primary difference between private and public negotiations during public contracting is the overarching law and policy that exists in public procurement. Concepts like fair opportunity to compete, equal treatment of suppliers, and transparency do not serve as legal constraints in non-government negotiations in the same way. This practice will note key principles where they are relevant to negotiation planning and execution for public contracting.
Professional judgment: The procurement professional utilizes discernment, experience, knowledge, skills, training, best practices, lessons learned, integrity, and ethics throughout the preparation and execution of a negotiation.

Procurement professionals generally are involved in negotiations with multiple interests that must be accommodated, and creative exploration of solutions is often needed. While procurement professionals must learn the differences among and how to adapt to varying negotiation styles, the focus of this practice is on the more effective approach: integrative negotiation.

SECTION 1: THEORY

Element 1.1: Establish Policies and Procedures for Negotiation

Procurement policies and procedures are the foundation for a consistent, ethical, and transparent process for conducting negotiations. Entities should dedicate a section of their procurement policies and procedures to describe the authority, criteria, and process for engaging in negotiation.

Policies and procedures should address:
- The roles and responsibilities of the procurement professional and the negotiation committee.
- Who may hold negotiation authority and the process by which this authority is delegated.
  - Procurement professional, stakeholders, reviewers
  - Elected officials, governing board, senior management
  - Suppliers
- Legal requirements
  - Laws, regulations, codes, ordinances, policies
- Conditions for entering into negotiations
  - Complexity and type of procurement
  - Level of risk
  - Dollar value of procurement
  - Terms of a proposed contract

Element 1.2: Negotiation Strategy and Considerations

Solicitations that permit negotiations include:
- Request for Proposals (RFP) or Invitation to Negotiate (ITN) with Consecutive or Concurrent Negotiations.
- Invitation for Bids (IFB) (when low price is above budget)
- Request for Qualifications (RFQ)

Negotiation Strategy

A well-crafted and executed negotiation strategy contributes to achieving the best outcome for all parties. Procurement should develop a negotiation strategy in collaboration with internal stakeholders that addresses the entity’s needs and objectives based on the required and desired outcomes. The procurement professional is an integral part of the negotiating team and should take the lead role in crafting the negotiation strategy. This strategy should include the identification of other team members whose participation may be necessary should negotiations occur. The team should be limited to those members with essential skills or knowledge and temperament necessary to reach agreement.
Element 1.3: The Negotiation Committee

The procurement professional should serve as the chairperson of the negotiation committee and facilitate the process. The decisions and actions of the committee should be properly documented in the procurement/contract file.

It is the Chairperson’s responsibility to ensure:
- Everyone is heard and that all viewpoints are discussed.
- No member is influencing the decisions or discussion of other members.
- The confidential nature of the negotiation process, content, and outcome until award.
- The overall integrity of the process.
- Compliance with communication protocols.

The negotiation committee composition and number of members should be based on the nature of each procurement, member expertise and authority, and available resources. The negotiating committee may include:
- Procurement
- Finance
- Project management
- Legal
- Technical Expert/Subject Matter Expert (SME)

Members must commit a significant amount of time and effort as advance planning is necessary for the efficient and proper execution of the negotiation process. Negotiation committee members should be vetted in advance by the procurement professional to ensure all members are free of bias or conflict of interest. This should include the requirement for committee members to sign non-disclosure or conflict of interest declaration forms prior to participation, if they haven’t already done so for the project. Members should conduct themselves in a professional, ethical manner and not use their position to influence other members of the committee.

Ensuring that the negotiation process is free of any bias or conflict of interest is important for all stakeholders, not just the negotiation team.

Once committee members have been selected, roles should be identified, including the lead negotiator. While the lead negotiator may be the procurement professional, that role may be delegated to another individual based on the needs of the project and the points to be negotiated. If delegated, the procurement professional should provide the negotiation lead with a document, i.e., manual, describing the negotiation process and guiding principles.
A live training session should be conducted prior to negotiation and the Chairperson should reinforce:

- Negotiation committee member roles and responsibilities.
- The negotiation process and steps to be followed.
- Purpose/goals of the negotiation from an entity/project standpoint.
- The timeline and expectations, including attendance and participation at scheduled meetings.
- Compliance with communication protocols, internally and externally, as well as confidentiality, including:
  - Signature of relevant declarations, e.g., impartiality, confidentiality, conflict of interest
  - Identification of actual, potential, or perceived conflicts of interest

SECTION 2: PROCESS

The negotiation process must be carried out in accordance with all applicable laws, the language outlined in the solicitation, as well as the principle of ethics, which includes accountability, impartiality, professionalism, service, and transparency. The entity must keep all negotiation information secure and must maintain confidentiality of proposals, subject only to applicable freedom of information or public record laws.

Element 2.1: Negotiation Types: Simple and Complex

There are two main types of negotiation, simple and complex.

Simple negotiations may be utilized in the following contexts:
- Invitation for Bids (IFB) or Request for Quotations (RFQ), when allowed
- Contract modifications and change orders
- Projects with few stakeholders
- Small dollar purchases
- Minimal risk procurements
  - Time may not be a critical factor
  - Technical requirements are easily identified and understood

Complex negotiations may be utilized in the following contexts:
- Requests for Proposals (RFP)
- Invitation to Negotiate (ITN)
- Projects with several internal or external stakeholders
- High dollar procurements
- High risk procurements
  - Several factors outside of price alone, e.g., supplier performance, are major considerations and need to be negotiated to obtain best value
  - Time is a critical factor
  - Heavy technical or functional criteria are involved
  - Complex legal issues are involved, e.g., international procurements
Element 2.2: When and with whom to negotiate

When negotiations are anticipated, the procurement professional conveys the entity’s intent to negotiate to the top-ranked proposer(s) and facilitates the negotiation process. The type of solicitation and selection rationale determine when and with whom negotiation is conducted.

During the procurement process:
- Conduct negotiations after the offer submission deadline and prior to award.
- Negotiations may be used for change orders, contract modifications, or prior to exercising contract options to renew.

Who to negotiate with will depend on the type of solicitation:

Negotiations during qualifications-based solicitations or Request for Proposals (RFP) with Consecutive Negotiations often take place with the proposer with the single highest scoring or lowest priced proposal based on solicitation selection rationale. If negotiations fail, then negotiations with the next most qualified or lowest priced proposer can begin.

When conducting a Request for Proposals (RFP) with Concurrent Negotiations aka competitive or negotiated procurements, negotiations often take place with all suppliers within the competitive range to not provide a competitive advantage to a single proposer.

Once proposals have been reviewed and a competitive range of suppliers identified, a best and final offer (BAFO) may be requested from each of the proposers in the competitive range. The competitive range may consist of a single supplier. Once the BAFO request is made and responses are received, in most cases, no further negotiations are conducted. The BAFOs are then ranked by applying the evaluation scoring criteria issued with the RFP for both technical and price-related factors, and an award recommendation is made to the top-ranked proposer(s). The evaluation of the BAFO should be recorded in the procurement file along with selection justification and use the same evaluation criteria as stated in the solicitation.

Element 2.3: Procurement Professional Responsibilities

Simple negotiations are often handled by the procurement professional alone or with a single end user, as necessary.

During negotiations, the procurement professional’s responsibilities include:
- Recording the activities related to the negotiation process.
  - Ensure all negotiated elements are captured for inclusion in the contract
  - The process for record-keeping should be documented and consistent for all negotiations
  - A repository of the negotiation documents should be established and maintained
- Serving as the designated single point of contact for proposers and management of negotiation communications.
  - All negotiation communications regarding the solicitation must be directed to the procurement professional managing the negotiation process to decrease the likelihood of:
    - Inappropriate sharing of information
    - The appearance of impropriety
    - The potential for a protest
- Managing, guiding, and facilitating the negotiation process
  - Prepare negotiation strategy
  - Ensure the negotiating team understands the objectives of the Best Alternative To A Negotiated Agreement (BATNA)
  - Obtain approval from authorized entity members
Element 2.4: Planning and Preparation

Planning and preparation are key factors in successful negotiations. The procurement professional should determine the level of preparation needed. Simple negotiations may not require the same amount of preparation as complex negotiations.

When conducting a procurement, the solicitation document should state whether negotiation is permitted and what is or is not open to negotiation (e.g., scope, payment terms, jurisdiction, insurance, or other terms and conditions). Listing items that will or will not be negotiated allows suppliers to understand how best to formulate offers. Guidance should also be provided on the process to include exceptions/alternatives to the terms within the solicitation.

The ability for proposers to take exception will vary by jurisdiction or entity. Best practice recommends proposers declare within their response any exceptions to the terms and conditions of the solicitation. Exceptions in some jurisdictions may result in a determination of nonresponsiveness.

The negotiation team must agree on its objectives and ideal outcome. Considering the objectives allows the team to determine where they stand as they negotiate each point. A good negotiation strategy considers:
1. What the entity must have.
2. What would be good or great for the entity to have.
3. What the entity could do without, i.e., concessions.

Effective planning and preparation steps begin before engaging in negotiation and include the following:
- Procurement professionals should work with their entity’s internal stakeholders to create a negotiation committee (if necessary) and a unified negotiation strategy.
  - Identify participants and their roles
  - Determine the level of negotiation expertise and skills of the entity’s procurement and legal teams
    - If expertise is not available internally, it may be beneficial to consider supplementing the entity’s expertise by engaging a negotiation consultant, subject matter expert, or investing in negotiation training
    - Temperament and personality types should be considered when building a team. Desirable traits include:
      - Ability to listen
      - Empathy
      - Ability to engage in respectful dialogue
      - Integrity
      - Patience
      - Flexibility
      - Objectivity
      - Responsibility
      - Fairness
      - Impartiality
    - Ensure everyone understands the technical requirements
  - A supervisor and a subordinate should not serve on the same committee, as it may consciously or unconsciously cause undue pressure on the subordinate
Identify the number of qualified proposers.
- Negotiation process, e.g., short listing, interviews, concurrent, Best and Final Offer (BAFO)

Conduct risk assessment, management, and mitigation.
- Determine project risk exposure
- Establish entity risk tolerance in areas of:
  - Health and Safety
  - Reputation
  - Politics
  - Operations
  - Strategy
  - Compliance
  - Finance
- Determine risk tradeoffs vs. cost

Conduct research.
- Research the supplier and what is important to them
- Determine the type of good/service and associated industry/market standards
- Analyze market conditions

Establish negotiation objectives.
- Analyze price
  - Determine a target price range or items to be negotiated listed in order of priority
  - Obtain entity maximum acceptable budget range prior to negotiations
- Establish a price objective for an agreement that is fair and reasonable through price or cost analysis
  - Total cost of ownership (TCO)
  - Pricing, both amount and structure
    - Compare to Independent (Government) Cost Estimate (IGCE)
    - Price escalation/de-escalation terms
- Schedule
- Delivery
- Requirements
- Key personnel
- Terms and conditions
- Potential for added value (sustainability, warranty, penalties, training)

Develop questions that address each party's interests.
- Identify the advantages and disadvantages of each party's position, for example, if time is a priority to the entity, that may present an advantage to the supplier

Obtain a copy of any third party agreements
- Service level agreement (SLA) for IT procurements
- Separate maintenance agreements
- Pop-up or embedded terms and conditions

Focus on strengths, weaknesses, opportunities, and threats (SWOT) identified during evaluation, or in the quote or proposal.

Determine the financial benefit of maintaining/supporting existing supplier relationships vs. the cost of changing suppliers.
Element 2.5: Integrative Negotiation

The procurement professional’s goal is to negotiate towards a mutually advantageous agreement that creates value for all parties. Negotiations should be approached as an interest-based inquiry to find solutions and build mutually beneficial, transparent entity-supplier relationships.

In an integrative (win-win, interest-based) negotiation approach:

- The desired result is an unambiguous and equitable contract for both parties.
- The focus is on building relationships (spend as much time fostering relationships as on substantive issues).
- Collaboration, not confrontation, is invited (e.g., How can we come to an agreement? What steps can we take for both parties to achieve success?).
- Both parties take responsibility for generating options that create value to reach an equitable solution.

Negotiation Techniques:

- Anchor the discussion with a draft agreement.
- Create a detailed agenda for negotiation meetings.
- Let the offeror speak to their objectives first.
- Ask questions and listen to understand what each party perceives as valuable.
- Notice non-verbal cues.
- Observe the offeror’s body language.
- Hold back entity concessions as long as possible.
- Give small concessions that have little or no value to the entity rather than one large concession. Avoid “bundling” everything into a single deal.
- Take a break, regroup with the negotiation committee and discuss.
- Use positive statements.
- Reframe anxiety as excitement.
- Draw on the power of silence.
- BATNA: Know when to walk away and understand it is okay to walk away.
- Remember you are representing your entity and you must know/support entity goals.
- Be aware of and considerate of sensitive topics.
Negotiation Considerations:

- Face to face (virtual or in person) meetings are ideal for conducting complex negotiations.
- Be certain the person you are negotiating with has the authority to make decisions on behalf of their entity.
  - If negotiating with a large organization, obtain written verification of authority
- Maintain fair and equitable competition, avoiding actions that could give an unfair advantage or raise questions about conflicts of interest. Maintain ethical behavior and standards.
  - Federal and state laws levy civil and criminal penalties for misrepresentation
- Maintain confidentiality of discussions regarding specific proposals or evaluations within the negotiation committee until the award or solicitation blackout period, i.e., cone of silence, has ended.
- Encourage suppliers to provide their most competitive pricing.
  - Avoid disclosure of other suppliers’ pricing
  - Avoid specifying the price required to become eligible for award
- Ensure procurement process integrity by maintaining consistency with the solicitation requirements, including evaluation criteria.
  - Significant new data, information, or instructions should be supplied to all offerors in the competitive range without favoritism or bias

Element 2.6: Negotiation Steps

Simple and complex negotiations follow similar steps. Depending upon the complexity, these steps may be abbreviated for best fit. For example, the test and evaluation steps may not be applicable to simple negotiations. Consider the strategies that are applicable when negotiating in various contexts such as qualifications-based procurements, sole source contracts, amendments, and disputes, and adjust the steps accordingly.

1. Open: Each party provides objectives of the negotiation.
   a. Explain the ground rules of negotiation.
   b. Address points of negotiation (e.g., price, schedule).
   c. Each party explains the desired outcome from the negotiation.
2. Test/Confirm: Each party tries to understand what is important to the other and where trade-offs could be made.
   a. Ask questions.
   b. Listen.
3. Propose/Discuss: Having heard each party’s objectives begin addressing negotiation points such as:
   a. Entity explanation of proposal deficiencies or significant weaknesses that could signal interests and possible value tradeoffs.
   b. The impact of market factors, increase in quantities, and benchmarks.
4. Bargain/Counter: Each party points out a component they would like to address or negotiate back and forth.
   a. Parties exchange counteroffers.
   b. Record concessions and gains.
   - During oral presentations, discussions, or at the time of negotiation meetings in RFPs, concessions or additional promises may not be in the proposal and should be documented by the proposer in the form of a revised proposal.
5. Evaluate: Once bargaining is completed, the supplier should submit a revised proposal, final offer, or BAFO based on the negotiation discussions.
   a. The negotiation committee or internal stakeholders should consider the negotiated offer.
   b. Include the evaluation or negotiation committee to determine if a BAFO is needed.
   c. The final offer or BAFO should be evaluated based on the criteria as stated in the solicitation.

The above negotiation steps may be repeated as many times as necessary.
Element 2.7: Completion/Finalization

The procurement professional will document the outcome of the negotiations to be included in the final contract. Once agreement is reached, it should be reviewed by internal stakeholders, including legal if any terms and conditions were revised, as well as by the supplier.

Ensure all negotiated changes are accurate and stated in the final proposed agreement. Follow the appropriate award procedures based on policies and the type of solicitation.

The procurement/contract file should include a record of the negotiation, including:
- Objective and history of the procurement.
- Names of negotiators.
- Explanation of how the final price was negotiated.
- Discussion of revised contract terms.

The negotiation is not complete until the contract is written and executed.

References

Resources


General Assembly Bills Related to Procurement 2021

County Government
Public Chapter 472  81 Act – Conflict of Interest
SB 656 - HB 616  Amends 5-21-121(a). Revises the provisions governing conflicts of interest. Removes county employees, except employees of the finance department and purchasing department. Revises the meaning of direct and indirect interest. Makes the 81 Act more like the general conflict of interest statute. Effective May 18, 2021.

Education
Public Chapter 146  Transportation Services
SB 1116 - HB 497  Amends Section 49-6-2101(e). Increases permitted term for employing school transportation personnel and contracting for transportation services from four years to up to six years.

Purchasing
Public Chapter 196  Lease Financing
SB 547 – HB 1462  Amends Title 9 by adding the “Uniformity in Local Government Financing Act”. Provides that Title 9, Chapter 24 does not expand authority of any public entity to enter into lease financing and does not limit authority for lease financing except as provided in Chapter 24.

Provides that public entities must comply with the following requirements: (i) receive authorization from the comptroller of treasury or designee and must present it to the governing body of the public entity for consideration; (ii) the weighted average maturity of the principal payments under the lease financing must not exceed the estimated weighted average of the property; (iii) are not authorized to enter agreements unless authorized by applicable law and the term must not exceed maximum term of debt that could be issued by the public entity; (iv) if the indebtedness of the public entity is only payable pursuant to applicable law from revenues, the payments made by the public entity must only be paid by such revenue; and (v) if the lease payments under the agreement are payable or secured by ad valorem taxes of the public entity and the term exceeds the maximum term of the note, the public entity shall not enter into the agreement without adopting and publishing a resolution.

Provides the public entity must submit a request for approval and a plan of the lease financing to the Comptroller. The Comptroller will approve or disapprove the plan within 15 days after receipt. The public entity may act on the plan after approval or after the expiration of the 15 days.

Provides property leased by the public entity is deemed property owned by the public entity and is exempt from taxation.

Public Chapter 234   Public Contracts and Contractors
SB 1150 - HB 1112  Amends Title 12, Chapter 4 and Title 50. Except as provided by State or federal law, prohibits local government entities, as part of a contract to improve real property, from requiring a contractor or remote contractor to: (i) obtain, gather, or disclose personnel information of the contractor’s employees; (ii) provide personnel information of the contractor’s employees to a person or entity; (iii) adhere to safety and health standards in excess of those required by OSHA and TOSHA; (iv) provide access to the worksite to anyone who would not otherwise have legal access to the worksite; (v) provide access to personnel information of anyone furnishing labor or materials on the worksite to a third party unless the third party is a certified public accountant performing an audit for the contract; (vi) require written contracts for labor and materials; (vii) be responsible for another party’s compliance agreement to the improvement; or (viii) offer employment to a temporary laborer regardless of the length of service.

Provides that a governmental entity shall only restrict a contractor from bidding, proposing, or accepting a contract if the contractor has committed a willful violation of federal or state law.
Effective April 22, 2021

Public Chapter 310   Purchasing Procedures
SB 1125 - HB 235  Amends 49-13-111 and 49-2-203 relative to bid limits.
Amends 12-3-1212. Counties that have adopted the CFMS of 1981 are deemed to have a full-time purchasing agent.
Effective July 1, 2021.

Public Chapter 527   Surplus First Responder Two-Way Radios
SB 1560 - HB 488  Amends Titles 4, 7, 12, 13, 35, 37, 39, 40, 47, 54, 55, 65, 66, 67, and 68 relative to telecommunications.

Following notice to the commissioner, the department of safety may transfer surplus first responder two-way radios to a county designated as distressed by the Appalachian Regional Commission. After the transfer of the surplus two-way radio to a distressed county, other radios may be transferred to other county governments in need that submit proof to the department that the county cannot purchase the equipment. Two-way radios obtained by the federal government must be transferred in accordance with federal law.
Effective May 25, 2021.

Records
Public Chapter 447   Scanning of Permanent Records
SB 832 - HB 648  Amends 10-7-404(c) to provide that the county public records commission may authorize the destruction or transfer of the original paper version of permanent records once reproduced electronically in accordance with the requirements in 10-7-404(d). Provides that the original paper version may only be destroyed, once reproduced in accordance with 10-7-404(d), upon a majority vote of the county public records commission.
Provides that if the county public records commission authorizes the destruction of the original paper version of permanent records solely in accordance with 10-7-404(d), the original records must not be destroyed: (i) for one year, if the record is created after the effective date of the act (May 13, 2021) and before July 1, 2022; and (ii) for six months, if the record is created on or after July 1, 2022, and before July 1, 2023.

Deletes a provision in 10-7-404(c) relative to the preservation of all original process in any civil action or criminal proceeding.

Effective May 13, 202

Utilities

Public Chapter 321 Competitive Sealed Proposals
SB 297 – HB 388 Amends 12-3-1207 to provide that the board of commissioners of a utility district has the same rights and is subject to the same restrictions and requirements as apply to a municipal governing body under 12-3-1207 relative to accepting competitive sealed proposals (instead of bids). The board of commissioners of a utility district shall adopt a purchasing policy pursuant to Title 7, Chapter 82, Part 8, that contains criteria for purchasing through competitive sealed proposals and procedures consistent with 12-3-1207 before purchases may be made.
# Treasurer’s Report: January – December 2020

Lynn Farnham, CPPO, CPPB | Roane County

---

## TREASURER’S REPORT
January - December 2021

<table>
<thead>
<tr>
<th></th>
<th>Beginning Balance</th>
<th>Revenue</th>
<th>Expenses</th>
<th>Ending Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>22,959.08</td>
<td>3,625.00</td>
<td>(3,420.90)</td>
<td>23,163.18</td>
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<tr>
<td>February</td>
<td>23,163.18</td>
<td>900.00</td>
<td>(428.18)</td>
<td>23,635.00</td>
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<tr>
<td>March</td>
<td>23,422.13</td>
<td>820.81</td>
<td>(133.80)</td>
<td>24,109.14</td>
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<tr>
<td>April</td>
<td>24,109.14</td>
<td>946.55</td>
<td>(707.15)</td>
<td>24,348.54</td>
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<tr>
<td>May</td>
<td>24,348.54</td>
<td>193.85</td>
<td>(194.95)</td>
<td>24,347.44</td>
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<tr>
<td>June</td>
<td>24,347.44</td>
<td>2,580.93</td>
<td>(19.95)</td>
<td>26,908.42</td>
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<tr>
<td>July</td>
<td>26,908.42</td>
<td>5,826.92</td>
<td>(3,303.86)</td>
<td>29,431.48</td>
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<tr>
<td>Aug</td>
<td>29,431.48</td>
<td>624.01</td>
<td>(244.00)</td>
<td>29,811.49</td>
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<tr>
<td>Sep</td>
<td>Revenue/Adjustment</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Oct</td>
<td>Revenue</td>
<td></td>
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</tr>
<tr>
<td>Nov</td>
<td>Revenue</td>
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</tr>
<tr>
<td>Dec</td>
<td>Revenue</td>
<td></td>
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## BALANCES OF FUNDS AS OF 08/13/2021

<table>
<thead>
<tr>
<th>Fund</th>
<th>Balance</th>
</tr>
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<tbody>
<tr>
<td>General Fund</td>
<td>3,024.80</td>
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<tr>
<td>Business Matching</td>
<td>5,000.00</td>
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<tr>
<td>Fall Conference</td>
<td>5,588.49</td>
</tr>
<tr>
<td>Scholarship*</td>
<td>14,157.00</td>
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<tr>
<td>Golf Tournament</td>
<td>0.00</td>
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<tr>
<td>Diversity Expo</td>
<td>2,031.20</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>29,811.49</strong></td>
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</table>

## Membership Information for 2020

<table>
<thead>
<tr>
<th>Category</th>
<th>Members</th>
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</thead>
<tbody>
<tr>
<td>NIGP &amp; Chapter Members</td>
<td>74</td>
</tr>
<tr>
<td>Chapter Only Members</td>
<td>36</td>
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<tr>
<td>Student Members</td>
<td>1</td>
</tr>
<tr>
<td>Retired Members</td>
<td>23</td>
</tr>
</tbody>
</table>

## 2021 AGENCY MEMBERS

- Blount County
- Cocke County
- City of Bristol
- Hamilton County
- City of Clarksville
- Hamilton County Schools
- City of Cleveland
- Johnson County
- City of Decatur, AL
- KCDC
- City of Johnson City
- Knox County
- City of Kingsport
- Knox County Sheriff
- City of Knoxville
- Knoxville Utilities Board
- City of Knoxville, Fire
- Loudon County
- City of Morristown
- Public Building Authority
- City of Oak Ridge
- Roane County
- Chattanooga Housing
- Roane State
- University of TN - Chattanooga
- University of TN - Knoxville
- Sullivan County
- Union County
Calendar of Events

Get ready for 2021, here we go!

October 18th – 30th  UPPCC testing period
October 27th  Competency Module: Mission & Public Benefit
October 28th – 29th  Virtual Fall Professional Development Conference (details below)

<table>
<thead>
<tr>
<th>October</th>
<th>November</th>
<th>December</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judy Peffley – 6th</td>
<td>Donnie Fawver II – 2nd</td>
<td>Jolene Combs – 10th</td>
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<tr>
<td>Blount County</td>
<td>Knox County</td>
<td>City of Johnson City</td>
</tr>
<tr>
<td>Terry McKee – 15th</td>
<td>Madelyn Kelly – 5th</td>
<td>Gabriel Massey – 12th</td>
</tr>
<tr>
<td>KCDC</td>
<td>City of Decatur</td>
<td>KCDC</td>
</tr>
<tr>
<td>Hugh Holt – 17th</td>
<td>Pamela Cotham – 6th</td>
<td>Jackie Cooper – 20th</td>
</tr>
<tr>
<td>Knox County Sheriff’s Office</td>
<td></td>
<td>Blount County</td>
</tr>
<tr>
<td>Lori Holmann – 22nd</td>
<td>Karisa Scott – 7th</td>
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</tr>
<tr>
<td>Knox County</td>
<td>City of Knoxville</td>
<td></td>
</tr>
<tr>
<td>Mercedes Gutierrez – 26th</td>
<td>Tom Seagle – 10th</td>
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<tr>
<td>Public Building Authority</td>
<td>Knox County</td>
<td></td>
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<tr>
<td>Kristi Powers – 28th</td>
<td>Robert Genno – 17th</td>
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<tr>
<td>City of Cleveland</td>
<td>Claiborne Count Finance</td>
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<td></td>
<td>Roger Kane – 28th</td>
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<td></td>
<td>University of TN</td>
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<td></td>
<td>Jennifer Huffaker – 29th</td>
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<tr>
<td></td>
<td>Sevier County Government</td>
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### Joint Fall Conference 2021

#### “Superheroes of Procurement”

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Session/Activity</th>
<th>Speakers/Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wednesday, October 27, 2021</strong></td>
<td></td>
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</tr>
<tr>
<td>9:00 – 1:00</td>
<td>NIGP’s CLASS: – Competency Module: Mission &amp; Public Benefit</td>
<td>Hazel Orick Gibson, CPPB, PMP, President of ETPA</td>
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<tr>
<td>5:30 PM – ??</td>
<td>Social Event</td>
<td>Camille Thomas, CPP, President of TAPP</td>
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<tr>
<td><strong>Thursday, October 28, 2021</strong></td>
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</tr>
<tr>
<td>8:00 – 8:05</td>
<td>Welcome &amp; Convene Conference</td>
<td>Hazel Orick Gibson, CPPB, PMP, President of ETPA</td>
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<tr>
<td>8:05 – 8:15</td>
<td>Charitable Partner</td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td>8:15 – 9:00</td>
<td>Session No. 1: Legislative Updates</td>
<td>Terry McKee, MPA</td>
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<td></td>
<td></td>
<td>Knoxville’s Community Development Corporation</td>
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<td></td>
<td></td>
<td>Rick Hall, CTAS</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Cassie Wheeler, MTAS</td>
<td></td>
</tr>
<tr>
<td>9:00 – 10:00</td>
<td>Session No. 2: Contemporary Business Practices, Finding Common Ground</td>
<td>NIGP Business Council</td>
<td></td>
</tr>
<tr>
<td>10:00 – 10:15</td>
<td>BREAK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10:15 – 11:15</td>
<td>Session No. 3: Insights for Effective Market Research &amp; Developing a High-Performing Statement of Work</td>
<td>CPE - RFP</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Jake Smithwick</td>
<td></td>
</tr>
<tr>
<td>11:15 – 12:45</td>
<td>LUNCH &amp; VENDOR EXPO (Subject to Change)</td>
<td></td>
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<tr>
<td>12:45 – 1:50</td>
<td>Session No. 4: Roundtable Discussion</td>
<td>Lori Bryant, CPPB</td>
<td></td>
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<tr>
<td>2:00 – 3:00</td>
<td>Session No. 5: How to Use NASPO Contracts</td>
<td>Voight Shealy</td>
<td></td>
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<tr>
<td>3:00 – 4:00</td>
<td>Session No. 6: Cyber Security</td>
<td>Avero Advisors</td>
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<tr>
<td>4:00 – 4:15</td>
<td>BREAK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4:15 – 4:35</td>
<td>Recognition of Retirees &amp; Service Announcements &amp; Wrap Up</td>
<td>Debbie Dillon, CPPO, CPPB</td>
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<tr>
<td></td>
<td></td>
<td>Hazel Orick Gibson, MBA, NIGP-CPP, CPPB</td>
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<tr>
<td></td>
<td></td>
<td>Camille Thomas, CPP</td>
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<tr>
<td>4:35 – 5:15</td>
<td>ETPA MEMBERSHIP MEETING</td>
<td><em>(Rotated as planned)</em></td>
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<tr>
<td><strong>Friday, October 29, 2021</strong></td>
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<tr>
<td>8:00 – 8:15</td>
<td>OPENING &amp; CONVENE</td>
<td>Mark Mamontov</td>
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<td></td>
<td></td>
<td>Bass, Berry &amp; Sims PLC</td>
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<tr>
<td>9:15 – 9:30</td>
<td>BREAK</td>
<td></td>
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<tr>
<td>9:30 – 10:30</td>
<td>Session No. 7:</td>
<td>Carl Bonitto, CSCMP</td>
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<td></td>
<td></td>
<td>Area 3 Chapter Ambassador</td>
<td></td>
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<td></td>
<td></td>
<td>Northumberland County, Coburg, Ontario</td>
<td></td>
</tr>
<tr>
<td>10:30 – 11:30</td>
<td>Session No. 8:</td>
<td>Stacy Gregg, CPPO, CPPB, NIGP-CPP</td>
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<tr>
<td></td>
<td></td>
<td>University of South Carolina, Procurement Manager</td>
<td></td>
</tr>
<tr>
<td>11:30 – 11:45</td>
<td>Wrap Up</td>
<td>Hazel &amp; Camille</td>
<td></td>
</tr>
<tr>
<td>12:00 – 12:30</td>
<td>TAPP MEMBERSHIP MEETING</td>
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</table>