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DIVISION OF THE STATE CIO

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**Memorandum**

To: State Purchasing Directors, Audit and Certification, Procurement Legal Counsel

From: Michael B. Spicer, Chief Procurement Officer for IT

Date: April 22, 2008

RE: Exemption 78 – Software License Renewals

Budget and Control Board exemption number 78 relieves agencies of the necessity to sole source software license renewals if the software was competitively procured. The following will serve as clarification concerning the use of this exemption.

If the software was procured through a competitive solicitation, then the renewal of that license is exempt.

If software on state term contract was competitively procured, and if the product offered under the 10% rule is the same product from the same software manufacturer (i.e., you've met the requirements of 11-35-310(35)), and if the vendor holding the state term contract was offered, and refused to meet the lower price, then the product acquired under the 10% rule would be considered competitively procured and the exemption would apply to the renewal of the software licenses. You satisfied the requirement for competing the contract by offering it to the state term contract vendor. Please remember that the Code now requires that all decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit.

Looking at the software maintenance (in contrast to just the software), if the manufacturer requires the licensee to maintain a software maintenance contract in order to maintain the competitively procured software licenses (rather rare), then the software maintenance would also be considered competitively procured and the exemption would apply equally to the renewal of the software maintenance.

However, not all software on state term contract is competitively procured. Some is acquired under a sole source executed by the Chief Procurement Officer. In these cases, the exemption would not apply to renewal of either the license or maintenance.