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Office Depot FACTS



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About TCPN:

- TCPN is a department within Region 4 Education Service Center, which is a governmental entity in the State of Texas.
 - Regional Education Service Centers were established by the Texas Legislature in 1967 and are currently governed by Chapter 8 of the Texas Education Code.
 - As a governmental entity in the State of Texas, TCPN must follow all applicable state and federal procurement requirements when issuing solicitations and awarding contracts.
- TCPN takes legal compliance very seriously.
 - TCPN has gone to great lengths (including a detailed and ongoing consultation with outside legal counsel) to develop procedures that ensure legal compliance in the solicitation and awarding of contracts.
 - TCPN is, to our knowledge, the only governmental purchasing cooperative that has received and maintains ISO 9001:2008 certification validating the consistency with which established procedures are followed.
 - TCPN has an impeccable record of offering quality contracts that are in complete compliance with all State procurement requirements.

About the Office Supply RFP:

- The current office supply RFP was advertised, evaluated, and awarded in accordance with Texas law and consistent with established internal procedures in the same manner as all TCPN contracts.
 - Nine suppliers submitted sealed proposals to TCPN, and after the initial evaluation four suppliers were awarded a contract in February 2010.
 - One supplier (Office Depot) was put through an extended evaluation period during which TCPN did additional due diligence. During this period Office Depot answered questions and addressed all outstanding issues.
 - After concluding the extended evaluation, TCPN determined Office Depot met the criteria necessary to receive a contract and Office Depot's offerings would benefit the TCPN membership.
 - Throughout the entire process, TCPN staff sought out and acted on the advice of both internal and external legal counsel regarding the Office Supply RFP to ensure that all steps taken by TCPN staff met or exceeded all state procurement requirements.

About the E-Mails:

- The author is a former Office Depot employee, David Sherwin. According to Office Depot and a March 28, 2009 article in the Florida Naples News Mr. Sherwin was terminated for workplace misconduct in April 2008.
- The e-mails typically allege some kind of misconduct or impropriety by TCPN in the evaluation/award of the Office Depot contract and calls for investigations into his allegations. These e-mail blasts are routinely sent to an extensive list of individuals, institutions and organizations in multiple states.
- Sending e-mails full of accusations and innuendos is not a new practice for Mr. Sherwin. Shortly after his termination from Office Depot Mr. Sherwin began sending emails regarding Office Depot's contract with the U.S. Communities purchasing cooperative, which was Office Depot's primary cooperative at the time. Once Office Depot made TCPN its primary purchasing cooperative, Mr. Sherwin shifted his attention to the TCPN contract.
- Allegations - Two of the author's more popular allegations are:
 - TCPN took a bribe in exchange for awarding a contract to Office Depot
 - The Office Depot contract with TCPN is under formal investigation
- TCPN Response:
 - TCPN has not, nor has any TCPN employee received any kind of "bribe" or special benefit in relation to the award of any contract including the contract awarded to Office Depot.
 - There is no merit to any claims made by Mr. Sherwin regarding the TCPN/Office Depot contract. In fact, TCPN took extra steps to ensure all actions with regards to the award of this contract were in strict compliance with the laws of the State of Texas.
 - The Texas State Auditor's Office and the Texas Education Agency have followed up on complaints filed by Mr. David Sherwin regarding the Office Depot contract award. Both have investigated his allegations and closed the investigations without adverse finding or action against TCPN.

If anyone has any concern regarding TCPN they are encouraged to contact TCPN directly as we would be pleased to share factual information with them.

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Office DEPOT®

Dear Valued Customer

It has come to our attention that you have recently received some information that is inaccurate and misinformed regarding the viability and legitimacy of Office Depot's contract with The Cooperative Purchasing Network ("TCPN"). We regret any inconvenience this is causing you and we want to provide you with the accurate facts below.

As an initial matter, I want to give you some background on TCPN. TCPN, which was established more than a decade ago, is a national cooperative purchasing network for public sector agencies. TCPN itself is a government entity and is bound to follow the same laws and regulations regarding bidding and purchasing as any entity utilizing its contracts. Office Depot and TCPN have been partners for more than a decade and Office Depot was awarded its current office supply contract with TCPN in July 2010. The RFP was advertised nationally and all office supply distributors were invited to participate. The responses were tabulated and evaluated and the award was approved by the TCPN Board of Directors.

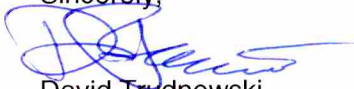
While it is true that the contract was awarded to Office Depot several months after it was awarded to other suppliers, there is nothing unusual about the timing. Public agencies should carefully review the vendor's program prior to award to ensure the offering is in the best interests of the taxpayers. Here, TCPN conducted its due diligence and determined that Office Depot's program was such an offering. Conducting such due diligence and delaying an award while doing so is not at all inappropriate.

Further, we have seen allegations by David Sherwin, a disgruntled former employee, and others about a purported \$50,000 payment to TCPN by Office Depot; however, no such payment was ever made. Sherwin, who was terminated for workplace misconduct, has been on a loud and negative campaign against Office Depot in which he has alleged a variety of improper pricing practices. In June 2010, the Florida Attorney General indicated that it had investigated and was dismissing, with prejudice, a "whistleblower" lawsuit brought by David Sherwin. In dismissing Mr. Sherwin's complaint, the Attorney General said that it investigated and found insufficient basis for the claims.

Office Depot is proud that we are part of the family of TCPN vendors. Our pricing is competitive, transparent, auditable, and provides public agencies with significant value. Currently, there are thousands of public sector agencies purchasing under this program, and that number is growing every day. Customers are already recognizing the incredible discounts that Office Depot is offering through the TCPN cooperative, which offers a large assortment of products to meet the needs of public agencies nationwide.

To provide some additional information on TCPN, I have attached to this e-mail a TCPN Letter of Introduction written by TCPN National Contract Manager Matthew Mackel. I hope this clarifies any misinformation that you have received and please do not hesitate to contact your Office Depot sales representative, or TCPN, to answer any questions you may have.

Sincerely,



David Trudnowski
Vice President, Business Solutions Division



Matthew Mackel
7145 West Tidwell Road
Houston, TX 77092

To Whom It May Concern

TCPN is a national purchasing cooperative, able to aggregate one of the largest pools of purchasing potential for use by all governmental entities that must comply with state procurement laws and regulations (public and private schools, colleges, universities, cities, counties and other government entities). TCPN is not a stand-alone entity; it is one department within the Region 4 Education Service Center <http://www.esc4.net/>. Education Service Centers are governmental entities created by the Texas Legislature and governed by Chapter 8 of the Texas Education Code <http://www.tcpn.org/docs/4-Education%20Code.pdf>. (Page 4 – highlighted area) The statute grants the Commissioner of Education of the Texas Education Agency the authority to establish service centers and decide any matter concerning the operation or administration of service centers. Tex. Ed. Code §8.001. The Commissioner's rules governing service centers can be found at 19 TAC §53.001 et seq.

TCPN follows the purchasing procedures mandated by state procurement laws and regulations. All TCPN awarded vendors have gone through a Request for Bid or Proposal process. This process includes but is not limited to: creation of solicitation, advertised across the nation for minimum of four weeks, responses are received and must be sealed responses, sealed responses are time stamped upon arrival, a formal bid opening open to public is held, proposals are evaluated and finally the Region 4 board reviews and awards contract. All awarded TCPN vendors shown on www.tcpn.org have been through this process. To help ensure consistency, our procedures have been ISO 9001:2008 certified for the last 6 years.

Finally each state has its own laws addressing intergovernmental purchasing by local governmental agencies. Please use the following link http://www.tcpn.org/default.aspx?name=state_statute_main to find a listing of each state's corresponding statutes.

If you should have any questions or would like any additional information, please do not hesitate to call me at (713) 744-6349.

Please let me know if I can be of further assistance.

Sincerely, Matthew S. Mackel National Contract Manager

A handwritten signature in dark ink, appearing to read "Matthew S. Mackel", written in a cursive style.



To: Region 4 Superintendents

From: Andy Pechacek

Date: February 8, 2011

Re: TCPN Contract Update

You may have recently received email correspondence questioning the legality of TCPN's current office supply contract with Office Depot. This correspondence is filled with sensational and baseless allegations designed to damage TCPN because of its relationship with Office Depot. The author of these emails is a former Office Depot employee who, according to Office Depot, was terminated for misconduct. He appears to be engaged in a crusade, dating back to 2009, designed to smear the reputation of Office Depot and organizations associated with it.

Region 4/TCPN has a reputation of commitment to compliance and quality. One way we are able to assure our customers and vendors that TCPN contracts are in full compliance with the law is through the on-going association with the highly regarded law firm of Thompson & Horton LLP. Thompson & Horton attorneys have been involved in the development of TCPN's procurement process and were consulted on the specific issues related to most recent award of the Office Depot contract. TCPN takes great care to ensure that all contracts (including the Office Depot contract) have been properly advertised, evaluated and awarded according to the procurement requirements of Chapter 44 of the Texas Education Code and internal TCPN procedures. In addition, TCPN has certified its procurement process under the ISO 9001: 2008 certification standards and undergoes on-going internal and annual external audits to ensure that those standards are met.

A summary of the events surrounding the award of the Office Depot contract are as follows:

TCPN advertised a request for sealed proposals for office supplies in September and October of 2009. At that time Office Depot had an active TCPN contract which had been the only office supply contract offered through TCPN since 1997. That contract was not due to expire until January 2011.

The office supply RFP was advertised, evaluated, and awarded in accordance with Texas Law and in the same manner as all other TCPN contracts. Four suppliers (Office Max, Quill, Gonzales, and Hallmark) were awarded in February 2010.

TCPN requested additional information from Office Depot and felt it would be in the best interest of its members to conduct additional due diligence prior to making a determination as to the Office Depot RFP. Once all questions and outstanding issues were resolved to TCPN's satisfaction, Region 4 awarded Office Depot a contract effective July 12, 2010.

If there are any concerns regarding the award of the Office Depot contract the related due diligence documents are available on line at www.tcpn.org.

Attached is a copy of Office Depot's response to these allegations which they sent to their customers. If you have any questions or concerns about this matter, please contact Jason Wickel at 713.744.8115.

The answer is 4[®]

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Bill McKinney, Ph.D. – *Executive Director*