



**MINUTES OF DECEMBER 12, 2022  
MEETING**

**MINUTES**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #051**  
**MONDAY, DECEMBER 12, 2022, AT 2:00 P.M.**  
**MULTI-MEDIA ROOM AND TEAMS**

**Members in Attendance:**

Mike Perry, Hannah Salita, Buddy Lea, Chris Benson, Brian Wilcox, Bryan Chriske, Michael Connors

Paul Krivacka, Debi Moss, Robin Upchurch, Davis Nwankwo, Randy Dean, Kay Morgan, Chadwick Nottingham, Jessica Starling, Terry Mason, Kelly Johns, Kim Henry, Trinity Weathersby, Tamara Byrd, Judy Tribble, Leonard Chadwick, Leslie Hafner, Karen Conway, DeRenne Raley,

**I. Call to Order:** Mr. Mike Perry, Chief Procurement Officer, called the meeting to order and recognized that a quorum of voting members was present. Mr. Perry welcomed new non-voting member Leslie Hafner. Leslie is the Senior Vice President of Government Relations for Omni Partners.

**II. Minutes from August 18, 2022, Meeting:** Mr. Perry asked if there were any corrections or additions to the meeting minutes from August 18, 2022. Hearing none, a motion was made by Mr. Buddy Lea, Assistant Commissioner, Department of Finance and Administration, to accept the minutes as presented. Mr. Bryan Chriske, Legislative Procurement Compliance Manager, Comptroller of the Treasury, seconded the motion. All members voted in favor – none opposed.

**III. New Business:**

Mr. Perry asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the following New Business agenda items:

Mr. Krivacka proceeded to present agenda items (1):

- (1) Contractor Hosted Data, Audit, and Other Requirements

Mr. Krivacka summarized the following points about the Contractor Hosted Data, Audit, and Other Requirements proposal:

- This proposal modifies Section E. "Contractor Hosted Services Confidential Data, Audit, and Other Requirements," to align with recent changes in federal standards for government data as detailed in the Federal Information Processing Standards Publication.

Hearing no discussion on agenda items (1), Mr. Chris Benson, Business Operations Director, Finance and Administration, made a motion to recommend the Contractor Hosted Data, Audit, and Other Requirements proposal as presented to the Procurement Commission for approval. Ms. Hanna Salita, Program Director, Office of Administrative Services, seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (2):

(2) Boycott of Israel

Mr. Krivacka presented the following points regarding the Boycott of Israel proposal:

- This proposal revises the reference from the public chapter number to the TCA citation (Tenn. Code Ann. § 12-4-119) for ease of reference.
- This revised term will also be added to the Purchase Order Terms and Conditions as applicable.

Hearing no discussion on agenda item (2), Mr. Lea made a motion to recommend the Boycott of Israel proposal as presented to the Procurement Commission for approval. Mr. Benson seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (3):

(3) GU Model (fee-for-service contract with a federal or local government entity) Instructions

Mr. Krivacka presented the following points about the GU Model (fee-for-service contract with a federal or local government entity) Instructions proposal:

- Some federal government agencies have requested that the State use the word "Agreement" instead of "Contract" and "Agency" instead of "Contractor."
- This proposal would permit State Agencies to accommodate that request without the need to submit a Rule Exception Request.

Hearing no discussion on agenda item (3), Mr. Benson made a motion to recommend the GU Model (fee-for-service contract with a federal or local government entity) Instructions

proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (4):

(4) TDOT Request to Grant Templates

Mr. Krivacka presented the following points regarding the TDOT Request to Grant Templates proposal:

- This proposal will add new terms and revise current optional terms for use by TDOT to address program needs.
- Some of the changes were requested by TDOT to follow the requirements of the Federal Transit Administration's ("FTA's") regulations and FTA's February 9, 2021, Master Agreement, and an Executive Order. Please see 49 CFR 26.29, 2 Part 200 Appendix II.A, EO No 13043, and 2/9/21 Master Agreement sections §12(e)(4)(ii) (p. 53-55), §3(i)(6) (p.17), §34(a) (p.90), and §39 (p.94)
- Additional language was also added to comply with changes to the Infrastructure Investment and Jobs Act.

Hearing no discussion on agenda item (5), Mr. Chriske made a motion to recommend the TDOT Request to Grant Templates proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (5):

(5) Optional Terms for OCJP section D.6. Conflicts of Interest GR and GG.

Mr. Krivacka presented the Optional Terms for OCJP section D.6. Conflicts of Interest GR and GG proposal:

- Many local government and non-profit applicants for the Department of Finance and Administration, Office of Criminal Justice Programs grants include part-time or limited services of faculty or employees of the State of Tennessee as part of their criminal justice or victim service program activities (for example SANE nurses or expert trainers). These employees are typically experts in a particular field, hold a special certification, or are uniquely suited to fill a particular role. The State employees have no connection with the issuance of State grants to local criminal justice-related non-profits or local governments other than perhaps strengthening the proposed local program with the availability of their talent and expertise and the services they are uniquely qualified to provide. There is no conflict of interest; however, the broad language of the TN contract policy inadvertently prohibits the sharing of these resources. This amendment ensures that State employees, who are the only source of expertise, are not paid twice for the same activities.

Hearing no discussion on agenda item (5), Mr. Lea made a motion to recommend the Optional Terms for OCJP section D.6. Conflicts of Interest GR and GG proposal as presented to the Procurement Commission for approval. Mr. Benson seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (6):

(6) Notice of Intent to Award

Mr. Krivacka presented the Notice of Intent to Award proposal:

- This proposal updates the Notice of Intent to Award as follows: (1) adding instructions regarding the computation of time; (ii) copying the list of documents included in the open file; and (iii) adding a note for instructions if requesting an open records request.

Hearing no discussion on agenda item (6), Mr. Chriske made a motion to recommend the Notice of Intent to Award proposal as presented to the Procurement Commission for approval. Mrs. Salita seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (7):

(7) Configurator Invitation to Bid “Questions” Term

Mr. Krivacka presented the Configurator Invitation to Bid “Questions” Term proposal:

- This proposal will add additional information to the Questions term in the Edison configurator.
- This proposal puts respondents on notice that protests based on any objection to the ITB shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline (aligns the current “Questions” term to have similar instructions as are currently included in the RFP.)

Hearing no discussion on agenda item (7), Mr. Benson made a motion to recommend the Configurator Invitation to Bid “Questions” Term proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka requested to take agenda items (8) and (9) and agenda items (10) and (11) together:

Mr. Krivacka then proceeded to present agenda items (8) and (9):

(8) Procurement Procedures Manual of the CPO, § 7. Managing The Relationship with the Contracting Party.

(9) Contractor Scorecard Template (NEW)

Mr. Krivacka presented the Procurement Procedures Manual of the CPO, § 7. Managing The Relationship with the Contracting Party and Contractor Scorecard Template (NEW) proposals:

**Procurement Procedures Manual of the CPO, § 7. Managing the Relationship with the Contracting Party.**

- This proposal amends the Manual and the following Contractor Scorecard Template to address suggestions brought forward at the last Procurement Commission meeting.
- This proposal to the Manual adds guidance for circumstances where a procurement professional includes a scorecard to evaluate the Contracting Party's performance as an optional contract management tool.

**Contractor Scorecard Template – NEW**

- This proposal adds new template language for circumstances where Procurement Professionals will utilize a Contractor Scorecard.
- This proposal will standardize the term to be included at Contract Section A.#. Scope. The scorecard metrics may be customized. All metrics should be measured objectively and should correlate to specific requirements in the contract.

Hearing no discussion on agenda items (8) and (9), Mr. Chriske made a motion to recommend the Procurement Procedures Manual of the CPO, § 7. Managing The Relationship with the Contracting Party and Contractor Scorecard Template (NEW) proposals as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda items (10) and (11):

(10) Grant Contract "GR" D.19. Contract Term

(11) GG D.19. Term

Mr. Krivacka presented the Grant Contract "GR" D.19. Contract Term and GG D.19. Term proposals:

**GR D.19 Contract Term**

**GG D.19. Term**

- These proposals will revise the GG and GR D.19. Contract Term to move from an email reporting system to a direct-entry reporting system into the Edison Supplier Portal.

Hearing no discussion on agenda items (10) and (11), Mr. Lea made a motion to recommend the Grant Contract "GR" D.19. Contract Term and GG D.19. Term proposals as presented to the Procurement Commission for approval. Mrs. Salita seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (12):

(12) Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007

Mr. Krivacka presented the Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007 proposal:

- This proposal will add a new section 12. "Central Database" and definitions to assist with compliance with Tenn. Code Ann. § 4-56-110.

Hearing no discussion on agenda item (12), Mr. Lea made a motion to recommend the Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007, proposal as presented to the Procurement Commission for approval. Mr. Benson seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (13):

(13) Optional Term for GR and GG: State-Sponsored Insurance Plans Enrollment (NEW)

Mr. Krivacka presented the Optional Term for GR and GG: State Sponsored Insurance Plans Enrollment (NEW) proposal:

- This proposal will add optional language to the GR and GG Templates for the following purpose:

Ensure that grant recipients do not enroll members or officials in a state-sponsored health insurance plan unless the Grantee qualifies as a governmental or quasi-governmental entity under federal law applicable to ERISA.

Hearing no discussion on agenda item (13), Mr. Lea made a motion to recommend the Optional Term for GR and GG: State Sponsored Insurance Plans Enrollment (NEW) proposal as presented to the Procurement Commission for approval. Mrs. Salita seconded the motion. All members voted in favor – none opposed.

**Adjournment:** Hearing no other business, a motion for adjournment was made. All members voted in favor – none opposed, whereupon the December 12, 2022, Advisory Council meeting was adjourned.



# **ADVISORY COUNCIL AGENDA ITEMS OVERVIEW**

## Overview of Agenda Items:

1. RFP and RFQ Template Section B.1.: Remove or Revise request for fax number:
  - Request to revise the Request for Qualifications and Request for Proposals Template at Section B.1. to remove the requirement for a Respondent to provide its facsimile number by adding (“if applicable”).
  - As some companies have moved away from facsimile numbers, this will make that information optional.
2. Federal Funding Accountability and Transparency Act (FFATA): (FA Template)
  - Request to remove the reference to the DUNS number in the FA Template as the federal government has transitioned from the DUNS number to the Unique Entity Identifier (“UEI”).
  - For more information about obtaining the Unique Entity Identifier, the Contractor should visit the [SAM.gov](http://SAM.gov).
3. GR and GG Templates – Correct Website Links:
  - Request to update the website link included in the optional E.#. Security Audit contract term in the GG and GR Templates.
  - Request to update the website link included on the optional Grant Budget information page on the GG and GR Templates.
4. E.2. Contractor Commitment to Diversity (FA Template):
  - Request to revise FA Template at section E.2. Contract Commitment to Diversity by adding typical default section (B.15.) which requests diversity business information. This will be in red text, with option to revise if not correct.
  - Request to revise the optional instructional text for instances where a Contract did not result from a formal solicitation e.g., a sole source contract.
5. Governor’s Office of Diversity Business Enterprise (ITB):
  - Request to revise the Go-DBE page included in the ITB by removing the limitation that entities be located in the State of Tennessee.
  - Request to remove incorrect phone number.
6. Sample Letter of Diversity Commitment:
  - Request to remove the Sample Diversity Letter from the RFQ Template and include as its own stand-alone model for inclusion in all applicable contract types and as an attachment to the FA Contract Template.
7. Citation Update: D.20. Procurement; and Federal Awards Procurement Standards:
  - Request to revise the citation reference from 2 C.F.R 200.317 – 200.326 to 2 C.F.R 200.317 – 200.327.
8. Lobbying:
  - Request to add additional language to the D.7. Lobbying Term to align with federal requirements.

9. GG Template D.19. Audit Report:

- Request to update the Governmental Grant (“GG”) Template optional D.19. Audit Report Language (included in instances where the Grantee is not statutorily subject to an audit).
- The GG and GR D.19. Contract Terms were recently revised (at the January 19, 2023 Procurement Commission meeting) to move from an email reporting system to a direct-entry reporting system into the Edison Supplier Portal and this request makes the same change to this optional term.

10. State Sponsored Insurance Plans Enrollment:

- Request to move the optional E.#. term in the GR and GG Templates to a mandatory term so included in all State grant contracts.

11. Protest Procedures:

- Request to add an electronic filing of protest documents and to update the Protest Procedures to align with recent changes adopted by Public Chapter No. 113.

12. Prohibited Contract Terms – NEW

- Request to add a new contract term to put Contractor’s on notice that certain contract terms are prohibited by state statute.

13. Procurement Procedures Manual of the CPO, § 5.13.4:

- Request to add additional instructions to the Manual for instances when a respondent identified in the Notice of Intent to Award as being the best evaluated, is subsequently found to be non-responsive.
- The Solicitation Coordinator should notate the reason for bypass in the Procurement File and to re-issue a revised Notice of Intent to Award.

14. Policy Number 2013-005, Certification of Goods and Services Recommended by the Central Nonprofit Agency or TRICOR Policy and Procedures:

- Request to update the Certification Policy to better align with updated statutory references and procedures.

15. EFORM Request Documents:

- Request to add a new eform field for “Agency Request Tracking Name (brief description so the agency can identify).”
- Inclusion of this new form field will help agencies organize their approved eforms as the new brief description form field will subsequently populate when a search function in Edison eforms is utilized.

**RFP AND RFQ TEMPLATE SECTION  
B.1.: REMOVE OR REVISE REQUEST  
FOR FAX NUMBER**

**REDLINE**

**REQUEST:**     **Revise the RFQ and RFP Templates as follows:**

	<b>B.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number, <u>if applicable,</u> of the person the State should contact regarding the response.
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**RFP AND RFQ TEMPLATE SECTION  
B.1.: REMOVE OR REVISE REQUEST  
FOR FAX NUMBER**

**CLEAN**

**REQUEST:      Revise the RFQ and RFP Templates as follows:**

	<b>B.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number, if applicable, of the person the State should contact regarding the response.
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**FEDERAL FUNDING ACCOUNTABILITY  
AND TRANSPARENCY ACT (FFATA):  
(FA TEMPLATE)**

**REDLINE**



**REQUEST: Revise the FFATA term as follows in the FA Template:**

**Federal Funding Accountability and Transparency Act**

Add the following Section if the contract will be funded in whole or part by federal funds anticipated to equal or exceed \$30,000.

**E.#.** Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
  - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of

- Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
  - d. The Contractor will obtain a ~~Data Universal Numbering System (DUNS)~~Unique Entity Identifier (UEI) number and maintain its ~~DUNS-UEI~~ number for the term of this Contract. More information about obtaining a ~~DUNS-UEI~~ Number can be found at: [http://fedgov.dnb.com/webform/the System for Award Management \(SAM.gov\).](http://fedgov.dnb.com/webform/the System for Award Management (SAM.gov).)

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

**FEDERAL FUNDING ACCOUNTABILITY  
AND TRANSPARENCY ACT (FFATA):  
(FA TEMPLATE)**

**CLEAN**

**REQUEST: Revise the FFATA term as follows in the FA Template:**

**Federal Funding Accountability and Transparency Act**

Add the following Section if the contract will be funded in whole or part by federal funds anticipated to equal or exceed \$30,000.

**E.#.** Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
  - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of

Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
  - d. The Contractor will obtain a Unique Entity Identifier (UEI) number and maintain its UEI number for the term of this Contract. More information about obtaining a UEI Number can be found at: the System for Award Management (SAM.gov).

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

**GR AND GG TEMPLATES – CORRECT  
WEBSITE LINKS**

**REDLINE**

**REQUEST: Revise the website links in the GR and GG Templates as follows:**

Line-Item funding must comply with the Expense Object Line-Item Category Definitions provided by F&A Accounts Policy 03, Appendix A (which is posted on the Internet at: <http://www.tn.gov/finance/topic/fa-policyinfo> <https://www.tn.gov/finance/looking-for/policies.html>). Budget line-items and the definitions above have legal, audit, and federal funding implications, and contracting agency staff are solely responsible for whether appropriate line-items are funded in accordance with the scope of service and the definitions set out by F&A Accounts Policy 03.

- E. #. Security Audit. The State may conduct audits of Grantee's compliance with the State's Enterprise Information Security Policy ("The Policy") or under this Grant Contract, including those obligations imposed by Federal or State law, regulation or policy. The Policy, as may be periodically revised, can be located at the following link: <http://tn.gov/finance/topic/sts-security-policies><https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>. The State's right to conduct security audits is independent of any other audit or monitoring required by this Grant Contract. The timing and frequency of such audits shall be at the State's discretion and may, but not necessarily shall, be in response to a security incident.

**GR AND GG TEMPLATES – CORRECT  
WEBSITE LINKS**

**CLEAN**



**REQUEST:       Revise the website links in the GR and GG Templates as follows:**

Line-Item funding must comply with the Expense Object Line-Item Category Definitions provided by F&A Accounts Policy 03, Appendix A (which is posted on the Internet at: <https://www.tn.gov/finance/looking-for/policies.html>). Budget line-items and the definitions above have legal, audit, and federal funding implications, and contracting agency staff are solely responsible for whether appropriate line-items are funded in accordance with the scope of service and the definitions set out by F&A Accounts Policy 03.

- E. #.    Security Audit. The State may conduct audits of Grantee’s compliance with the State’s Enterprise Information Security Policy (“The Policy”) or under this Grant Contract, including those obligations imposed by Federal or State law, regulation or policy. The Policy, as may be periodically revised, can be located at the following link: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>. The State’s right to conduct security audits is independent of any other audit or monitoring required by this Grant Contract. The timing and frequency of such audits shall be at the State’s discretion and may, but not necessarily shall, be in response to a security incident.

## **E.2. CONTRACTOR COMMITMENT TO DIVERSITY (FA TEMPLATE)**

**REDLINE**

**Request: Revise the FA Template as follows:**

**Default FA Template language:**

E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation Number (RFP Attachment 6.2. Section B - B.15.) (Attachment Reference) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

**Instructional Text:**

**Contractor Commitment to Diversity**

The Contractor Commitment to Diversity section may be removed or revised, with approval by CPO. Revise or remove the Contractor Commitment to Diversity section as appropriate.

**Option:** Replace E.2. Contractor Commitment to Diversity with the following term for contracts not awarded via a formal solicitation. The Diversity Reporting section may be removed or revised, with approval by CPO.

E.2. Diversity Reporting. The Contractor shall assist the State by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

## **E.2. CONTRACTOR COMMITMENT TO DIVERSITY (FA TEMPLATE)**

**CLEAN**

**Request: Revise the FA Template as follows:**

**Default FA Template language:**

- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to **Solicitation Number (RFP Attachment 6.2. Section B - B.15.)** and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

**Instructional Text:**

**Contractor Commitment to Diversity**

The Contractor Commitment to Diversity section may be removed or revised, with approval by CPO.

**Option:** Replace E.2. Contractor Commitment to Diversity with the following term for contracts not awarded via a formal solicitation. The Diversity Reporting section may be removed or revised, with approval by CPO.

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| <p>E.2. <u>Diversity Reporting.</u> The Contractor shall assist the State by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:<br/><a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a>.</p> |
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**GOVERNOR'S OFFICE OF DIVERSITY  
BUSINESS ENTERPRISE (ITB)**

**REDLINE**

**REQUEST: Revise the Diversity Language in the ITB as follows:**

### **GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE**

Efforts to Achieve Diversity Business Participation:

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

#### **Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)**

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

#### **Service-Disabled Veteran Business Enterprise (SDVBE)**

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business ~~located in the State of Tennessee~~ that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

#### **Small Business Enterprise (SBE)**

"Small business" means a business that is a continuing, independent, for-profit business which performs a commercially useful function ~~with residence in Tennessee~~ and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Disabled Business Enterprise (DSBE)

"**Disabled Business Enterprise**" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governors-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

Instructions:

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan

below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <https://tn.diversitysoftware.com/?TN=tn> and clicking the "Search Registered Directory" button ~~or by calling 615-741-9263.~~



**GOVERNOR'S OFFICE OF DIVERSITY  
BUSINESS ENTERPRISE (ITB)**

**CLEAN**

**REQUEST: Revise the Diversity Language in the ITB as follows:**

### **GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE**

Efforts to Achieve Diversity Business Participation:

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

#### **Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)**

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

#### **Service-Disabled Veteran Business Enterprise (SDVBE)**

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business that satisfies the criteria in Tenn. Code. Ann. §

12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

#### **Small Business Enterprise (SBE)**

"Small business" means a business that is a continuing, independent, for-profit business which performs a commercially useful function and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Disabled Business Enterprise (DSBE)

"**Disabled Business Enterprise**" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governors-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

Instructions:

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan

below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <https://tn.diversitysoftware.com/?TN=tn> and clicking the "Search Registered Directory" button.

# **SAMPLE LETTER OF DIVERSITY COMMITMENT**

**NEW**

**REQUEST: Remove the sample letter of diversity commitment from the Request for Qualifications (“RFQ”) Template and instead include as general document available for use and as an attachment to the FA Template.**

***Pro Forma ATTACHMENT 2***

***(Fill out only by selected Contractor)***

SAMPLE LETTER OF DIVERSITY COMMITMENT

**(Company Letterhead/Logo)**

**(Address)**

**(Date)**

**(Salutation),**

**(Company Name)** is committed to achieving or surpassing a goal of **(numeral)** percent spend with certified diversity business enterprise firms on State of Tennessee contract # **(Edison document #)**. Diversity businesses are defined as those that are owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of **(percentage)** participation on the **(Contract)** by using the following diversity businesses:

- (i) Name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran, or disability) of anticipated diversity subcontractors and suppliers:

\_\_\_\_\_

- (ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):

\_\_\_\_\_ %.

- (iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

\_\_\_\_\_

\_\_\_\_\_

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses.
2. Reporting monthly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small business accomplished under contract # **(Edison number)**.

**(Company Name)** is committed to working with the Go-DBE office to accomplish this goal.

Regards,

**(Company authority – signature and title)**

**CITATION UPDATE: D.20.  
PROCUREMENT; AND FEDERAL  
AWARDS PROCUREMENT STANDARDS**

**REDLINE**

**REQUEST: Revise the Grant Contract (“GR”) Template; Governmental Grant (“GG”) Template at section D.20 and the Terms and Conditions for Purchase Order Terms, “Federal Awards Procurement Standards” term as follows:**

**GR and GG:**

D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.317—200.327~~6~~ when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

For purposes of this Grant Contract, the term “equipment” shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00).

**Terms and Conditions for Purchase Orders:**

#. Federal Awards Procurement Standards. If applicable, Contractor agrees to comply with the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326~~327~~.



**CITATION UPDATE: D.20.  
PROCUREMENT; AND FEDERAL  
AWARDS PROCUREMENT STANDARDS**

**CLEAN**

**REQUEST: Revise the Grant Contract (“GR”) Template; Governmental Grant (“GG”) Template at section D.20 and the Terms and Conditions for Purchase Order Terms, “Federal Awards Procurement Standards” term as follows:**

**GR and GG:**

D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.317—200.327 when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

For purposes of this Grant Contract, the term “equipment” shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00).

**Terms and Conditions for Purchase Orders:**

#. Federal Awards Procurement Standards. If applicable, Contractor agrees to comply with the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.327.

**LOBBYING**

**REDLINE**

**REQUEST: Revise the D.7. Lobbying term in the GR and GG, and Optional Lobbying term in the FA (replacing “Grantee” with “Contractor” as follows:**

D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any ~~Federal~~federal contract, the making of any ~~Federal~~federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**LOBBYING**

**CLEAN**

**REQUEST:    Revise the D.7. Lobbying term as follows:**

D.7.    Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:

- a.        No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b.        If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c.        The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

# **GG TEMPLATE D.19. AUDIT REPORT**

**REDLINE**

**REQUEST: Revise the GG Template at Section D.19 as follows:**

**Audit Report**

If the Grantee is not statutorily subject to an audit, insert the following: ~~and add the Notice of Audit Report and Parent Child Information documents as attachment.~~

- D.19. Audit Report. For purposes of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

\_\_\_\_\_The Grantee shall provide audited financial statements to the Tennessee Comptroller of the \_\_\_\_\_Treasury (“Comptroller”) if during the Grantee’s fiscal year, the Grantee: (1) expends seven \_\_\_\_\_hundred fifty thousand dollars (\$750,000) or more in direct and indirect federal financial \_\_\_\_\_assistance and the State is a pass-through entity; (2) expends seven hundred fifty thousand \_\_\_\_\_dollars (\$750,000) or more in state funds from the State; or (3) expends seven hundred fifty \_\_\_\_\_thousand dollars (\$750,000) or more in federal financial assistance and state funds from the \_\_\_\_\_State, and the State is a pass-through entity.

At least ninety (90) days before the end of \_\_\_\_\_its fiscal \_\_\_\_\_year, the Grantee shall complete ~~Attachment [reference the Notice of Audit Report document]~~the Information for Audit Purposes (“IAP”) form online (accessible through the Edison Supplier portal) to \_\_\_\_\_notify the State whether or not Grantee is subject to an audit. The Grantee should submit only \_\_\_\_\_one, completed ~~Notice of Audit Report document~~form online during the Grantee’s fiscal year. Immediately after the fiscal year has ended, the Grantee shall fill out the End of Fiscal Year (“EOFY”) form (accessible through the Edison Supplier portal).

~~Any Grantee \_\_\_\_\_that is subject to an audit and so indicates on Attachment [reference the Notice of Audit Report \_\_\_\_\_document] shall complete Attachment [reference the Parent Child Information document].~~ If the \_\_\_\_\_Grantee is subject to an audit, Grantee shall obtain the Comptroller’s approval before engaging a \_\_\_\_\_licensed, independent public accountant to perform the audit. The Grantee may contact the \_\_\_\_\_Comptroller for \_\_\_\_\_assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller’s requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

The audit contract between the Grantee and the Auditor shall be on a contract form prescribed by the Comptroller. The Grantee shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. The Grantee shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.



# **GG TEMPLATE D.19. AUDIT REPORT**

**CLEAN**

**REQUEST: Revise the GG Template at Section D.19 as follows:**

**Audit Report**

If the Grantee is not statutorily subject to an audit, insert the following:

- D.19. Audit Report. For purposes of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Grantee shall provide audited financial statements to the Tennessee Comptroller of the Treasury ("Comptroller") if during the Grantee's fiscal year, the Grantee: (1) expends seven hundred fifty thousand dollars (\$750,000) or more in direct and indirect federal financial assistance and the State is a pass-through entity; (2) expends seven hundred fifty thousand dollars (\$750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars (\$750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity.

At least ninety (90) days before the end of its fiscal year, the Grantee shall complete the Information for Audit Purposes ("IAP") form online (accessible through the Edison Supplier portal) to notify the State whether or not Grantee is subject to an audit. The Grantee should submit only one, completed form online during the Grantee's fiscal year. Immediately after the fiscal year has ended, the Grantee shall fill out the End of Fiscal Year ("EOFY") form (accessible through the Edison Supplier portal). If the Grantee is subject to an audit, Grantee shall obtain the Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Grantee may contact the Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

The audit contract between the Grantee and the Auditor shall be on a contract form prescribed by the Comptroller. The Grantee shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. The Grantee shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

# **STATE-SPONSORED INSURANCE PLANS ENROLLMENT**

## **REDLINE**

**REQUEST: Move the “State Sponsored Insurance Plan Enrollment” optional Grant contract term from the GR Instructions, Considerations, and Options to a Section D. standard term and condition in the GR and GG Templates:**

**~~State Sponsored Insurance Plans Enrollment~~**

~~Add the following as appropriate.~~

**DE.#.** State Sponsored Insurance Plan Enrollment. The Grantee warrants that it will not enroll or permit its employees, officials, or employees of contractors to enroll or participate in a state sponsored health insurance plan through their employment, official, or contractual relationship with Grantee unless Grantee first demonstrates to the satisfaction of the Department of Finance and Administration that it and any contract entity satisfies the definition of a governmental or quasigovernmental entity as defined by federal law applicable to ERISA.

# **STATE-SPONSORED INSURANCE PLANS ENROLLMENT**

**CLEAN**

**REQUEST: Move the “State Sponsored Insurance Plan Enrollment” optional Grant contract term from the GR Instructions, Considerations, and Options to a Section D. standard term and condition in the GR and GG Templates:**

**D.#.** State Sponsored Insurance Plan Enrollment. The Grantee warrants that it will not enroll or permit its employees, officials, or employees of contractors to enroll or participate in a state sponsored health insurance plan through their employment, official, or contractual relationship with Grantee unless Grantee first demonstrates to the satisfaction of the Department of Finance and Administration that it and any contract entity satisfies the definition of a governmental or quasigovernmental entity as defined by federal law applicable to ERISA.

# **PROTEST PROCEDURES**

## **REDLINE**

Complete the form fields and follow, replace, or otherwise address red instructional text. Delete this paragraph before distributing the completed document to respondents.

## PROTEST PROCEDURES AND PROTEST BOND REQUIREMENTS

The Open File Period for this solicitation begins on **DATE** and ends on **DATE**. Any protest of this solicitation is due via mail or hand-delivery by 4:30 p.m. CT on **DATE** to the Central Procurement Office at the address listed below:

Michael F. Perry  
Chief Procurement Officer  
-and-  
Paul Krivacka  
Director of Compliance and Lead Attorney  
Central Procurement Office  
Dept. of General Services  
WRS Tower, 3rd Floor  
312 Rosa L. Parks Blvd.  
Nashville, TN. 37243-1102  
Tele: (615) 741-1035  
Fax: (615) 741-0684

Any respondent who has submitted a response to **[insert information identifying the solicitation]** and who claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract may submit a protest to the Chief Procurement Officer. Under Tenn. Code Ann. § 12-3-514, any protest of this solicitation must:

- Be submitted ~~in writing~~ **electronically to: [insert email address] or by hard-copy if electronic transmission is unavailable;**
- Be submitted within seven (7) calendar days after the day on which the notice of award or notice of intent to award is issued, whichever occurs first;
- Any issues raised by a protesting party after the seven-day period to protest shall not be considered as part of the protest, as required by the rules of the solicitation.
- Include and describe all grounds for the protest; and
- Include a protest bond payable to the State in the amount identified below **unless** the protest bond exemption under Tenn. Code Ann. § 12-3-514(g) applies and the protesting party provides **an electronic or hard-copy written exemption petition for an exemption for solicitations that are less than \$1 million.**

As established by Tenn. Comp. R. & Regs. 0690-03-01-.12(2), the following are the sole grounds for a protest:

- The contract award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the awarding entity;
- The procurement process violated a constitutional, statutory, or regulatory provision;
- The awarding entity failed to adhere to the rules of the procurement as set forth in the solicitation and this failure materially affected the contract award;
- The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; and



- The contract award resulted from a technical or mathematical error during the evaluation process.
- If provided in the solicitation, a protest that is based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the written “Questions & Comments Deadline.”
- A protest based upon the cancellation, in whole or in part, of a solicitation is not actionable and will not be considered by the Chief Procurement Officer, pursuant to Pub. Ch. No. 113.

As determined by the Chief Procurement Officer, tThe amount of the protest bond shall be:

- Five percent (5%) of the lowest bid or cost proposal evaluated;
- Five percent (5%) of the maximum liability or estimated maximum liability provided in the solicitation;
- Five percent (5%) of the estimated maximum revenue, if the solicitation, award, or proposed award is for a contract in which the State receives revenue; or
- For no-cost contracts, an amount determined by the Chief Procurement Officer.

**The protest bond amount required for this solicitation is **number** dollars (\$ #).**

Upon the Chief Procurement Officer’s receipt of a protest and protest bond, a stay of the solicitation, proposed award, or award will go into effect until the protest is resolved in accordance with Tenn. Code Ann. § 12-3-514.

**Protest Bond Example**

The following is an example of a protest bond whose form and substance are acceptable to the State of Tennessee Central Procurement Office:

**PROTEST BOND**

The surety company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. Bonds shall be certified and current Power-of-Attorney for the Surety’s Attorney-in-Fact attached.

**KNOW ALL BY THESE PRESENTS:**

That we,

\_\_\_\_\_  
(Name of protesting party)

\_\_\_\_\_  
(Address of protesting party)

as the party filing a protest of the State of Tennessee’s determination(s) regarding a solicitation, an award, or a proposed award of a contract, (hereinafter called the “Protesting Party”), and

\_\_\_\_\_  
(Name of surety)

\_\_\_\_\_  
(Address of surety)

as surety, (hereinafter called the “Surety”), do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee (“State”) in the penal sum of written amount (\$ number) for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

**THE CONDITION OF THIS BOND IS THIS:**

**WHEREAS**, the State has issued [solicitation name] (Solicitation No. #);

**AND**, the Protesting Party, as an entity that has submitted a response to Solicitation No. #, claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract;

**AND**, the signature of an attorney or the Protesting Party on a protest or other document constitutes a certificate by the signer that the signer has read the document and to the best

of the signer's knowledge, information, and belief, formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

**AND**, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protesting Party posts a protest bond, the Protesting Party does file this protest bond payable to the State with a notice of protest regarding the procurement process;

**AND**, the State shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination of the protest by the chief procurement officer;

**AND**, if the Protesting Party appeals the chief procurement officer's determination to the protest committee, the chief procurement officer shall hold the protest bond until instructed by the protest committee to either keep the bond or return it to the Protesting Party.

**NOW, THEREFORE**, this bond shall remain in full force and effect and shall be immediately payable to the State after the Protesting Party has had an opportunity to oppose the payment of this bond and a finding by the protest committee that:

1. The protest or other document was signed, before or after appeal to the chief procurement officer or protest committee, in violation of Tenn. Code Ann. § 12-3-514(c);
2. The protest has been brought or pursued in bad faith;
3. The affected state agency has suffered damages resulting in loss of funding, increased expenditures, or a disruption in services; the protest was filed in bad faith or in violation of Tenn. Code Ann. § 12-3-514(c); and the protest was not upheld;
4. The protest does not state on its face a valid basis for protest; or
5. For any other reason approved by the protest committee.

Otherwise, this bond shall be null and void.

**IN WITNESS WHEREOF**, the Protesting Party and Surety have executed this instrument and each has affixed its name and signature by its duly authorized officers, on this

\_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

WITNESS:

\_\_\_\_\_  
(Name of Protesting Party)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Authorized signature of Protesting Party)

\_\_\_\_\_  
(Signature of attorney-in-fact)

\_\_\_\_\_  
(Name of signatory)

\_\_\_\_\_  
(Name of attorney-in-fact)

\_\_\_\_\_

\_\_\_\_\_

(Title of signatory)

(Surety's Tennessee license number)

DATE

# **PROTEST PROCEDURES**

## **CLEAN**

Complete the form fields and follow, replace, or otherwise address red instructional text. Delete this paragraph before distributing the completed document to respondents.

## **PROTEST PROCEDURES AND PROTEST BOND REQUIREMENTS**

The Open File Period for this solicitation begins on **DATE** and ends on **DATE**. Any protest of this solicitation is due via mail or hand-delivery by 4:30 p.m. CT on **DATE** to the Central Procurement Office at the address listed below:

Michael F. Perry  
Chief Procurement Officer  
**-and-**  
Paul Krivacka  
Director of Compliance and Lead Attorney  
Central Procurement Office  
Dept. of General Services  
WRS Tower, 3rd Floor  
312 Rosa L. Parks Blvd.  
Nashville, TN. 37243-1102  
Tele: (615) 741-1035  
Fax: (615) 741-0684

Any respondent who has submitted a response to [insert information identifying the solicitation] and who claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract may submit a protest to the Chief Procurement Officer. Under Tenn. Code Ann. § 12-3-514, any protest of this solicitation must:

- Be submitted electronically to: [insert email address] or by hard-copy if electronic transmission is unavailable;
- Be submitted within seven (7) calendar days after the day on which the notice of award or notice of intent to award is issued, whichever occurs first;
- Any issues raised by a protesting party after the seven-day period to protest shall not be considered as part of the protest, as required by the rules of the solicitation.
- Include and describe all grounds for the protest; and
- Include a protest bond payable to the State in the amount identified below *unless* the protest bond exemption under Tenn. Code Ann. § 12-3-514(g) applies and the protesting party provides an electronic or hard-copy petition for an exemption for solicitations that are less than \$1 million.

As established by Tenn. Comp. R. & Regs. 0690-03-01-.12(2), the following are the sole grounds for a protest:

- The contract award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the awarding entity;
- The procurement process violated a constitutional, statutory, or regulatory provision;
- The awarding entity failed to adhere to the rules of the procurement as set forth in the solicitation and this failure materially affected the contract award;
- The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; and

- The contract award resulted from a technical or mathematical error during the evaluation process.
- If provided in the solicitation, a protest that is based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the written “Questions & Comments Deadline.”
- A protest based upon the cancellation, in whole or in part, of a solicitation is not actionable and will not be considered by the Chief Procurement Officer, pursuant to **Pub. Ch. No. 113**.

As determined by the Chief Procurement Officer, the amount of the protest bond shall be:

- Five percent (5%) of the lowest bid or cost proposal evaluated;
- Five percent (5%) of the maximum liability or estimated maximum liability provided in the solicitation;
- Five percent (5%) of the estimated maximum revenue, if the solicitation, award, or proposed award is for a contract in which the State receives revenue; or
- For no-cost contracts, an amount determined by the Chief Procurement Officer.

**The protest bond amount required for this solicitation is **number** dollars (\$ #).**

Upon the Chief Procurement Officer’s receipt of a protest and protest bond, a stay of the solicitation, proposed award, or award will go into effect until the protest is resolved in accordance with Tenn. Code Ann. § 12-3-514.

### Protest Bond Example

The following is an example of a protest bond whose form and substance are acceptable to the State of Tennessee Central Procurement Office:

#### PROTEST BOND

The surety company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. Bonds shall be certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached.

#### KNOW ALL BY THESE PRESENTS:

That we,

---

(Name of protesting party)

---

(Address of protesting party)

as the party filing a protest of the State of Tennessee's determination(s) regarding a solicitation, an award, or a proposed award of a contract, (hereinafter called the "Protesting Party"), and

---

(Name of surety)

---

(Address of surety)

as surety, (hereinafter called the "Surety"), do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee ("State") in the penal sum of written amount (\$ number) for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

#### THE CONDITION OF THIS BOND IS THIS:

**WHEREAS**, the State has issued [solicitation name] (Solicitation No. #);

**AND**, the Protesting Party, as an entity that has submitted a response to Solicitation No. #, claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract;

**AND**, the signature of an attorney or the Protesting Party on a protest or other document constitutes a certificate by the signer that the signer has read the document and to the best



of the signer's knowledge, information, and belief, formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

**AND**, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protesting Party posts a protest bond, the Protesting Party does file this protest bond payable to the State with a notice of protest regarding the procurement process;

**AND**, the State shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination of the protest by the chief procurement officer;

**AND**, if the Protesting Party appeals the chief procurement officer's determination to the protest committee, the chief procurement officer shall hold the protest bond until instructed by the protest committee to either keep the bond or return it to the Protesting Party.

**NOW, THEREFORE**, this bond shall remain in full force and effect and shall be immediately payable to the State after the Protesting Party has had an opportunity to oppose the payment of this bond and a finding by the protest committee that:

1. The protest or other document was signed, before or after appeal to the chief procurement officer or protest committee, in violation of Tenn. Code Ann. § 12-3-514(c);
2. The protest has been brought or pursued in bad faith;
3. The affected state agency has suffered damages resulting in loss of funding, increased expenditures, or a disruption in services; the protest was filed in bad faith or in violation of Tenn. Code Ann. § 12-3-514(c); and the protest was not upheld;
4. The protest does not state on its face a valid basis for protest; or
5. For any other reason approved by the protest committee.

Otherwise, this bond shall be null and void.

**IN WITNESS WHEREOF**, the Protesting Party and Surety have executed this instrument and each has affixed its name and signature by its duly authorized officers, on this

\_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

WITNESS:

\_\_\_\_\_  
(Name of Protesting Party)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Authorized signature of Protesting Party)

\_\_\_\_\_  
(Signature of attorney-in-fact)

\_\_\_\_\_  
(Name of signatory)

\_\_\_\_\_  
(Name of attorney-in-fact)

\_\_\_\_\_

(Title of signatory)

(Surety's Tennessee license number)

DATE

**PROHIBITED CONTRACT TERMS  
(NEW)**

**REQUEST:** Add the following as a new mandatory term and condition to the FA, NC, and RV, and Edison configurator contract templates. (Note: The [Public Chapter](#) reference will be updated with TCA reference, once codified).

D.#. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in [Pub. Ch. 113, § 5](#), shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by [Pub. Ch. 113, § 5](#), shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

**PROCUREMENT PROCEDURES  
MANUAL OF THE CPO, § 5.13.4**

**REDLINE**

**REQUEST: Revise the *Procurement Procedures Manual of the Central Procurement Office* documents as follows:**

**Procurement Procedures Manual:**

5.13. *Notice of Intent to Award.*

5.13.1. *Recommendation and Award.*

All contract awards should be on terms and conditions in the best interests of the State. Upon completion of the evaluation and any negotiations, responses will be ranked according to the total score assigned to each, in descending order. The respondent with the lowest cost of the responsive and responsible respondent with respect to an ITB, or the highest rated evaluation response, with respect to an RFP, is the respondent who should be recommended for award. The solicitation coordinator, with respect to an ITB, or the evaluation committee, with respect to all other solicitation methods, should send their recommendation, together with all working documentation, to the Chief Procurement Officer or his or her designee. The recommendation should be reduced to writing and include the reasons for selecting the respondent and should include any complete score sheets or pricing matrixes used in the award. The apparent awarded respondent will be contacted in writing by the Central Procurement Office in the form of a notice of an~~a~~ intent to award and protest procedures.

5.13.2. *Tied Responses – Resolution.*

A tie exists when two or more respondents offer goods or services that meet all specifications, terms and conditions at identical prices including cash discount offered for prompt payment. A tie will be broken by considering the following factors, in descending order:

- First preference shall be given to a “Tennessee Respondent.” Pursuant to Tenn. Code Ann. § 12-3-1113(c)(2), a “Tennessee Respondent” means a business that is:
  - Incorporated in this State;
  - Has its principal place of business in this State; or
  - Has an established physical presence in this State.

- Second preference shall be given to certified DBE respondents.
- Third preference shall be given to the respondent who was the low cost respondent on other items being bid for the same requisition.
- Fourth preference shall be given to the respondent who offers the best delivery.
- Fifth preference shall be given to further negotiations to break the tie.
- If a tie remains, it shall be broken by lot or coin toss.

5.13.3. *Sole Source or Proprietary Contract Awards.*

All Special Contract Requests to award a sole source or proprietary contract shall first be approved by the Chief Procurement Officer and be accompanied by sufficient documentation supporting the request. When it becomes apparent pursuant to a competitive procurement that the source of supply of the good or service at issue involves sole source or proprietary rights, the Chief Procurement Officer shall approve the contract award. Additional State approvals of the contract may be required pursuant to Section 5.15.3 of this Manual.

5.13.4. *Notification of Selected and Non-selected Respondents.*

The solicitation coordinator shall notify the selected respondent and non-selected respondents of the intent to award by providing all respondents with a copy of the intent to award sent to the awarded respondent. In the event the State determines that the selected respondent is nonresponsive, the Solicitation Coordinator shall document the reason for the bypass and include the written justification in the open file. The Solicitation Coordinator shall notify all respondents of the next best evaluated respondent with a revised notice of intent to award and protest procedures.

5.14. *The Open File Period.*

The solicitation coordinator should have a complete file available to the public before the notice of intent to award is sent out, which begins the open file period. The procurement file should contain, at a minimum, a copy of the solicitation, relevant correspondence between the solicitation coordinator and any respondents, responses to the solicitation, including clarifications and information gathered at oral presentations as applicable, score sheets, relevant spreadsheets used in analyzing the technical responses and cost

proposals, all responses to target price or BAFO negotiations, and the intent to award letter sent to the awarded respondent.

*5.15. Activities Required Before the Contract Effective Date*

All activities in this Section must be completed before a contract's effective date. A contract is not effective until all of the activities in this Section have been completed. If the activities in this Section are not completed before a contract's effective date, then the CPO may request that the contract be resubmitted with a new effective date. In no event shall the procuring State Agency request or submit payment for goods or services before the contract's effective date.

*5.15.1. Contract Award.*

Once the open file period has passed and no protests have been received, the solicitation coordinator may begin the award process in Edison with respect to an ITB. Awards of contracts pursuant to other procurement methods shall be conducted outside of Edison in accordance with the Rules, Central Procurement Office Policy and this Manual.



**PROCUREMENT PROCEDURES  
MANUAL OF THE CPO, § 5.13.4**

**CLEAN**

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Once the open file period has passed and no protests have been received, the solicitation coordinator may begin the award process in Edison with respect to an ITB. Awards of contracts pursuant to other procurement methods shall be conducted outside of Edison in accordance with the Rules, Central Procurement Office Policy and this Manual.

**POLICY NUMBER 2013-005,  
CERTIFICATION OF GOODS AND  
SERVICES RECOMMENDED BY THE  
CENTRAL NONPROFIT AGENCY OR  
TRICOR POLICY AND PROCEDURES**

**REDLINE**

**Policy Number 2013-005**  
**Central Procurement Office**  
**Certification of Goods and Services Recommended by the Central Nonprofit Agency or**  
**TRICOR**  
**Policy and Procedures**

**Effective:**        May 28, 2013

**Last Amended:**        June 21, 2023

**Prepared by:**        The Central Procurement Office of the State of Tennessee

**1. Purpose.**

To establish ~~Certification~~certification procedures related to TRICOR, CMRA, ~~Certification~~certification of ~~Products, Reevaluation~~products, reevaluation of a ~~Certified-Product or Service, Decertification, Certified Service Change, Product Design~~certified product or service, decertification, certified service change, product design or ~~Composition Change, Certified Product~~composition change, certified product or service ~~Price Increase/Decrease~~price increase/decrease for commodities and services that have been recommended by a Tennessee Central Nonprofit Agency or TRICOR as suitable for procurement by state entities.

**2. Scope.**

These policies and procedures apply to all procurements, contract awards, and amendments to such awarded contracts related to a certified good or service provided by a Tennessee Central Nonprofit Agency or TRICOR.

**3. Definitions.**

For purposes of this policy, the following terms shall have the meanings described below:

~~“Advisory Committee” means the committee established pursuant to Tenn. Code Ann. Sec. 71-4-703.~~

“Certification” – means the process by which goods or services are certified of satisfactory quality, reasonable in price, and commercially available pursuant to procedures approved by the Procurement Commission. A certification shall expire after three hundred sixty-five (365) days.

“Certification Committee”- means the committee defined by Section 4.3, Membership, of this Central Procurement Office Policy 2013-005. The Certification Committee may receive requests for Certification by the Tennessee Central Nonprofit Agency, pursuant to Tenn. Code Ann. established by Title§ 71-4-704 or by the TRICOR Board, pursuant to Tenn. Code Ann. § 41, Chapter 22, Part 119-(c), Tennessee Code Annotated.

~~“Certification” means the formal determination by the Procurement Commission that a given commodity or service is certified by the Procurement Commission Staff as being~~

~~of satisfactory quality, reasonable in price, and commercially available.~~

“Certification Term” – means the one (1) year term following the effective date of a Certification.

“CMRA”- Community Rehabilitation Agencies of Tennessee- the ~~central nonprofit agency~~Tennessee Central Nonprofit Agency designated by the advisory committee ~~for purchase from the blind and other severely disabled, created by Title 71, Chapter 4, Part 703, Tennessee as described in Tenn. Code Annotated~~Ann. § 71-4-703 for fulfillment of government orders for commodities or services.

~~“Effective Date of Certification” means the date on which Procurement Commission staff has determined to be the effective date of any approved certification of goods or services.~~

“Competitive Integrated Employment” – means employment available to individuals with severe disabilities or customized employment available to individuals with severe disabilities, at a setting typically found in the community, at minimum wage or greater with the same benefits as nondisabled employees receive, in which eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

“Fair Market Value” - means a price for goods or services at which buyers and sellers with a reasonable knowledge of all pertinent facts, and not acting under any compulsion to buy or sell, are willing to transact business.

~~“Procurement” means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by these Rules. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.~~

“Procurement Commission”- means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.

~~“Procurement Commission Staff” means the staff under the supervisory control of the Chief Procurement Officer.~~

~~“Tennessee Central Nonprofit Agency” – means the agency designated by the Committee to facilitate the distribution, by direct allocation, subcontract or any other means, of orders from state government for commodities and services on the procurement list among work centers for the blind and shall include the functions and operations as set forth in Tenn. Code Ann. § 71-4- agencies serving individuals with severe disabilities704.~~

~~“TRICOR”- means the Tennessee Rehabilitative Initiative in Correction produces, assembles or manufactures products with the labor of convicts confined within institutions or elsewhere employed within the State, the inmate program described in Tenn. Code Ann. § 41-22-402.~~

~~“Work Center” shall have the meaning set forth in Tenn. Code Ann. § 71-4-702(8).~~

#### **4. Policy and Procedure – Certification Committee.**

##### *4.1. Procedure.*



TRICOR and CMRA may request Certification of the Procurement Commission ~~certify~~ certain goods or services. — The Certification Committee advises the Procurement Commission regarding the "Certification" of articles and services.

Pursuant to TCA §§ 41-22-119, *et seq.*, ~~and 71-4-701 et seq.~~, all departments, institutions, agencies, and political subdivisions of this state, ~~which~~ that are supported in whole or in part by the state, shall purchase ~~all needed commodities or services~~ from the ~~Tennessee Rehabilitative Initiative in Correction (TRICOR) or from nonprofit work centers for the blind or~~ board all articles required by these departments, institutions, agencies serving individuals or political subdivisions of the state that are produced, repackaged, assembled, warehoused or manufactured by TRICOR with severe disabilities, the labor of inmates confined within the institutions or elsewhere employed within this state; provided, that ~~such services or~~ the articles are certified pursuant to procedures approved by the Procurement Commission ~~in accordance~~ as being of satisfactory quality, being reasonable in price and available.

~~with this Procedure.~~

Pursuant to TCA § 71-4-703 every governmental entity that is supported in whole or in part by the general assembly may purchase all services or commodities required by the governmental entity from the central nonprofit agency as long as commodities or services purchased by state governmental entities are certified pursuant to procedures approved by the Procurement Commission and are available, and commodities or services purchased by political subdivisions are certified by the chief financial officer of the political subdivision.

While, the procurement of certified articles or services are not subject to competitive requirements, certified articles and services must nonetheless be competitive with available goods or services generally available in the ~~market place~~marketplace in terms of price and quality.

#### 4.2. *Establishment of Policies and Procedures.*

The Certification Committee may establish certain policies and procedures, as approved by the Procurement Commission, ~~or~~ for the effective implementation of the ~~certification~~Certification program. Revisions to this policy shall be submitted to the Procurement Commission for approval.

#### 4.3. *Membership.*

The Certification Committee shall be comprised of a representative from the TRICOR board (voting member), CMRA of Tennessee (ex-officio only), the Departments of General Services and Finance and Administration, and the Office of the Comptroller of the Treasury as follows:

- Finance and Administration- Voting Member
- Comptroller- Voting Member
- General Services- Voting Member
- TRICOR- Voting Member
- CMRA- Ex-Officio Member

The representative from The Department of Finance and Administration shall serve as the Certification Committee Chairperson, who will have the following duties:

- To preside at all meetings of the Certification Committee;
- To insure that the functions of the Certification Committee as described in legislation and regulations are carried out;
- To promote the Certification Committee's continuous cooperative working relationship with state government and political subdivisions;
- To serve as official spokesperson for the Certification Committee in all activities for which the Certification Committee may deem necessary; and
- To provide direction, support, and guidance to the nonprofit work centers in interpreting or fulfilling Certification Committee activities.

The representative from the Office of the Comptroller of the Treasury shall serve as the ~~committee~~Certification Committee Vice-Chairperson.

The representative from the Department of General Services shall serve as the Certification Committee Secretary, who will have the following duties:

- Schedule ~~monthly~~Certification Committee meetings;
- Follow-up and coordinate TRICOR ~~and/or~~ CMRA agenda items for Certification Committee

- meetings; ~~and~~
- Record, prepare, and submit Certification Committee meeting minutes and product or service request recommendations and rejections, along with supporting data submitted by TRICOR and CMRA for review ~~and approval~~ by the ~~Procurement Commission Staff~~ Certification Committee; and,
- Prepare and submit notes to the Procurement Commission.

## 5. TRICOR.

### 5.1. *Generally.*

Products that are produced, repackaged, assembled, warehoused or manufactured by TRICOR with the labor of ~~convicts/inmates~~ confined within institutions or elsewhere employed within the State shall be considered for Certification; provided, that the articles are certified pursuant to procedures approved by the Procurement Commission as being of satisfactory quality, being reasonable in price and available.

### 5.2. *Establishment of Policies and Procedures.*

TRICOR, at its expense, will defend any suit that may be brought against the State to the extent that the suit is based on a claim that the goods certified by the Procurement Commission and purchased by State agencies infringes on a United States patent. TRICOR shall pay those costs and damages that are attributable to infringement claims and finally awarded against the State.

~~By January 1 of each year, TRICOR shall submit to Procurement Commission Staff, as recommended by the Committee, a preliminary listing of products on which TRICOR seeks certification. The Committee will utilize the preliminary list for the Committee's background review of products on which TRICOR seeks certification.~~

~~The Committee will make recommendations based upon one or more of its findings to Procurement Commission Staff. No products shall be certified until approved by the Procurement Commission Staff for recommendation to the Procurement Commission.~~

~~The~~The Certification Committee may, when it deems appropriate, contact persons and agencies independent of TRICOR in order to gather information concerning the price, quality and availability of the products proposed for certification.

The Certification Committee shall meet ~~at least~~ once a month, or as needed, to evaluate the products upon which a formal request for product certification has been made by TRICOR. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Certification Committee by TRICOR.

Each certified product shall be reevaluated by the Certification Committee beginning approximately ~~sixty (60)~~thirty (30) days prior to the end of the Certification Term to determine if the product should either continue to be

certified or be recommended for decertification.

The price of a product formally requested to be certified by TRICOR shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

## 6. CMRA.

### 6.1. *Generally.*

The purpose of this program as set forth in ~~Title 71, Chapter 4, Part 7, Tennessee Tenn. Code Annotated Ann. § 71-4-701,~~ is to ~~achieve employment further the policy~~ of the ~~blind, deaf, mentally disabled~~ state to encourage and severely disabled persons assist individuals with severe disabilities to achieve maximum personal independence through useful, productive, and gainful employment by assuring ~~and expanding the market~~ expanded Competitive Integrated Employment opportunities, thereby enhancing their dignity and capacity for ~~such persons' products or services. Products or services that are produced, assembled or manufactured and provided by self-support and realizing independence and self-sufficiency.~~ CMRA by subcontracting with State-certified non-profit agencies, who employ is currently designated as the blind, deaf, mentally disabled and severely disabled, shall be considered for Certification. Tennessee Central Nonprofit Agency to fulfill orders under this program.

### 6.2. *Establishment of Policies and Procedures.*

~~In accordance~~ In accordance with Title 71, Chapter 4, Part 7 of the Tennessee Code, as amended, the price of a product or service formally requested to be certified by CMRA shall be based upon the fair market ~~value~~ price of the product or service.

The Certification Committee will ~~make report~~ make report recommendations based upon its finding(s) to the Procurement Commission ~~Staff~~. No products or services shall be certified until approved by the ~~Procurement Commission Staff~~ Certification Committee.

The Certification Committee may, when it deems appropriate, contact persons and agencies independent of CMRA in order to gather information concerning the price, quality and availability of the products or services proposed for Certification.

The Certification Committee shall meet ~~at least~~ once a month, or as needed, to evaluate the products or services upon which a formal request for product or service certification has been made by CMRA. ~~In addition~~ In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Certification Committee by CMRA.

Each certified product or service shall be reevaluated by the Certification

Committee beginning approximately ~~sixty (60)~~thirty (30) days prior to the end of the Certification Term to determine if the product or service should either continue to be certified or be recommended ~~for~~ decertification.

The price of a product formally requested to be certified by CMRA shall be based upon a ~~"Fair Market Value."~~ The cost may be established by submitting the cost of

providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

## 7. Certification of Products.

### 7.1. Formal Request.

TRICOR and CMRA shall submit to the Certification Committee formal requests for product and service Certifications along with supporting data regarding quality, price and availability. The following is required for each product and service submitted for Certification:

- Product or service name
- General description of product or service
- Current ~~or proposed~~ Edison item number, if applicable
- An identification of the agencies that would benefit from TRICOR's or CMRA's product or service offering
- Packaging of the product
- Additional information, if requested by the Certification Committee

The following documentation is required, if applicable, for each product or service submitted in order for the Certification Committee to review the quality of the product or service offered:

- Product or service specifications
- Materials or chemical composition and the approximate amount of usage of each for unit of production
- Product warranties (e.g., warranty against defects; warranty as to fitness for purpose)
- Description of inspection program
- Description of quality control program
- Production time
- Description of assembly or mix process
- Independent laboratory evaluation, as may be requested by the Certification Committee
- Additional information, as may be requested by the Certification Committee
- Submit product sample, as may be requested by the Certification Committee

The following documentation is required, if applicable, for each product or service submitted in order to review the price of the product or service:

- Unit of measurement
- Unit price
- Breakdown of unit price by cost of supplies, labor, factory overhead, and profit, if applicable
- Supply copies of invoices to support the cost of supplies, and calculations of any factory overhead or profit applied, if requested by the Certification Committee
- Costs associated with delivery and any other associated delivery costs, and who



- will be responsible for payment
- Estimated annual sales volume based upon price
- Minimum order quantities
- Volume or any other discounts offered for the purchase of the product or service
- Supply pricing on at least three (3) comparable products or services from three different companies, if possible. If it is not possible to supply pricing for at least three (3) comparable products or services from three (3) different companies, a memorandum must be supplied justifying why it is impossible to obtain at least three (3) comparable prices. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified. The cost of comparable products should take into account volume discounts and other pricing structures used in private industry. The price of comparable products should be F.O.B. destination, unless otherwise stipulated.
- Any other special requirements or terms and conditions

The following documentation is required, if applicable, for each product or service submitted in order to review the availability of the product or service:

- Description of the delivery terms, including, but not limited to: destinations to which TRICOR or CMRA will not deliver and the means of delivery
- Delivery time (from point the order is received until reaching delivery destination)
- Description of Return Goods Policy
- Specific conditions under which a restocking charge will be levied and how much that charge will be
- A survey of three (3) companies from which comparable prices were obtained to determine the time in which the private sector could supply comparable products to the State. The survey should take into account the quantity ordered and the complexity of the product or service.

## 7.2. Certification Committee Review.

### 7.2.1. *Quality, Price, Availability.*

Certification Committee review will be based upon, but not be limited to, the documentation required to be submitted to the Certification Committee. If requested by the Certification Committee, TRICOR or CMRA will submit, as part of its quality report, an independent laboratory evaluation of a given certified product. The program for evaluation will include a product comparison chart that establishes brands or models manufactured by the private sector, which are comparable to the products submitted by TRICOR or CMRA for Certification. The review will involve a determination as to whether the quality is satisfactory or meets the State's standards for quality.

The Certification Committee will review the price of the three (3) comparable products. If TRICOR's or CMRA's price is higher than comparable products or services, the Certification Committee will require documentation of costs. The Certification Committee will

determine whether the TRICOR or CMRA pricing is at fair market value based on the documentation provided by TRICOR or CMRA or such other information as may be available relating to price or quality of the good or service for which certification is sought.

The survey conducted by TRICOR or CMRA will be used to compare the delivery time of TRICOR or CMRA in order to determine if the product can be supplied within a reasonable time frame. The Certification Committee review will also be based upon other documentation required to be submitted to the Certification Committee per the Formal Request Section.

#### *7.2.2. Certification Committee Recommendation to the Procurement Commission ~~Staff~~ Form of Recommendation.*

The Certification Committee's recommendation to certify or not certify the product or service will be submitted ~~at least monthly~~ prior to Procurement Commission ~~Staff~~ meetings and documented in the Certification Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR or CMRA shall be used to support the Certification Committee's review of price, quality and availability.

#### *7.2.3. Recommendation Not to Certify.*

If the Certification Committee recommends against certifying a certain product or service, the Certification Committee's recommendation shall be reported and based upon one or more of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services ~~and the costs of the work center in supplying the product or service.~~
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

#### *7.2.4. Contingent Recommendation.*

If the Certification Committee makes a contingent recommendation, the

contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent terms of the recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

7.2.4.7.2.5. *Approval for Certification.*

~~Procurement Commission Staff~~Certification Committee approval is required to certify a product or service.

~~7.2.5.7.2.6.~~ Effective Date of Certification.

The effective date of a product or service approved for Certification will be the date as determined by ~~Procurement Commission Staff~~ Certification Committee, which will be reported to the Procurement Commission and ~~entered~~ takes effect into the ~~Edison System~~ State's ERP system.

**8. Reevaluation of a Certified Product or Service.**

8.1. Review of a Certified Product or Service by the Certification Committee.

Each certified product or service shall be reevaluated by the Certification Committee beginning approximately ~~sixty (60)~~ thirty (30) days prior to the ending date of the Certification ~~Term~~ Term in order to determine if the product or service should either continue to be certified or not certified by the Certification Committee ~~to Procurement Commission Staff~~. The following documentation is required for each product or service being reevaluated in order to perform the end of Certification term review:

8.2. Price.

TRICOR or CMRA shall conduct a survey of three (3) original vendors, if possible, who were contacted for comparison of prices for Certification to determine:

- Current price for comparison to the Certification products or service price.
- If there have been any changes in the product or service since the original comparison which would account for changes in price.
- If there has been any change in market conditions or technology.

If it is not possible to supply information noted above concerning pricing from the three (3) original vendors or from at least three (3) vendors who produce the same or similar product or service, a memorandum must be supplied to the Certification Committee justifying why it is impossible. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified.

8.3. Quality and Availability.

The following shall be obtained for reevaluation of the certified product or service under review:

- The Complaint to Vendor file shall be obtained from the Department of General Services for review by the Certification Committee.

| —A current production model shall be supplied to the Certification Committee by  
| TRICOR or CMRA to determine if the same or better quality or production  
standards are being

- maintained.
- A list of the number of orders placed or the dollar volume of sales during the current Certification term shall be supplied by TRICOR or CMRA to the Certification Committee.

#### 8.4. Certification Committee Recommendation.

##### 8.4.1. *Form of the Recommendation.*

The Certification Committee's recommendation to certify or not certify the product or service will be submitted monthly to the Procurement Commission ~~Staff~~ and documented in the Certification Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison of private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR and CMRA shall be used to support the Certification Committee's review of price, quality and availability.

##### 8.4.2. *Recommendation Not to Recertify.*

If the recommendation from the Certification Committee is to not continue Certification of the product or service, the cause for not recommending shall be based upon any of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services ~~and the costs of the work center in supplying the product or service..~~
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

##### 8.4.3. Contingent Recommendation.

If the Certification Committee makes a contingent recommendation, the contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent terms of the recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

##### ~~8.4.3.~~8.4.5. Approval for Recertification.

~~Procurement Commission Staff Certification Committee~~ approval is required for recertification –upon reevaluation of the ~~certified~~Certified product or service with reporting of such approval to the Procurement Commission.

9. **Decertification.**

9.1. *Conditions for Decertification.*

~~Products or services which have been previously certified by Procurement Commission Staff~~Certified products or services are subject to decertification when one of the following conditions exists:

—A sufficient number of complaints are issued by an agency relating to the

- unavailability or poor quality of the products or services at issue.
- Design modifications or changes in material were made by TRICOR or CMRA that diminish the quality of the product.
- Price increases are requested by TRICOR or CMRA that are not supported by the work center's costs, and are beyond the current fair market price for comparable products or services.
- By request of TRICOR or CMRA upon supplying reasonable justification for decertification.
- Submission of sufficient criteria for not recommending recertification during the reevaluation process.

9.2. *Certification Committee Recommendation.*

The Certification Committee will make recommendations regarding decertification to Procurement Commission ~~Staff~~ based upon at least one of the conditions listed in the Decertification Section.

9.3. *Approval of Decertification.*

~~Procurement Commission Staff~~ Certification Committee approval is required to remove a product from the certified products catalog or to decertify a service. Any products or services that are decertified by ~~Procurement Commission Staff~~ Certification Committee will be reported to the Procurement Commission.

**10. Changes to Certified Goods or Services.**

10.1. *Requests to Change Certification for Goods or Services.*

All requests for any design, composition, or other significant changes or modification to any product or service that has been certified must be submitted in writing by TRICOR or CMRA to the Certification Committee within ~~sixty (60)~~ thirty (30) days prior to the scheduled change or modification as an addendum.

10.2. *Documentation Required for Approval.*

TRICOR or CMRA must also submit the following together with its request for a change:

- Complete documentation of the nature of the change or modification.
- The reason for the change or modification.
- Any changes in price, quality or availability information submitted with the original request for Certification.
- A list or primary customers of the certified product to be changed.

10.3. *Certification Committee Review of Change.*



The Certification Committee will review the change in the product or service to determine if the change has affected the quality, price or availability as currently certified.

#### 10.4. *Causes for Rejection of Change.*

If any one of the following occurs, it will be cause for not recommending a change in the product or service:

- The price change ~~is not supported by the Work Center's costs and~~ is beyond the current fair market value price for comparable goods or services.
- The quality of the product or service has been lessened and is no longer satisfactory or no longer meets the State's quality standards.
- The good or service can no longer be supplied within a reasonable time frame.

#### 10.5. Certification Committee Recommendation.

The Certification Committee will make recommendations regarding acceptance or rejection of a change to a certified good or service to Procurement Commission ~~Staff~~ based upon information supplied as required in Policy and Procedure- Certified Service Change, Product Design, or Composition Change section.

If the Certification Committee makes a contingent recommendation, the contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent terms of the recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

#### 10.6. *Approval of Change.*

~~Procurement Commission Staff~~Certification Committee approval is required for a design, composition, or other significant changes or modifications to any product from the certified products catalog or certified service and shall be reported to the Procurement Commission.

#### 10.7. *Disapproval of Change to a Certified Product or Service.*

If the ~~Procurement Commission Staff~~Certification Committee disapproves the modification, TRICOR or CMRA has the option of continuing with the currently certified product or service, or modifying the product or service and being subject to decertification.

### 11. Policy and Procedure - Certified Product or Service Price Increase or Decrease.

**11.**

11.1. *Conditions for Price Increase or Decrease for Certified Product or Service Firm Price Period.*

Prices for goods or services certified by Procurement Commission ~~Staff~~ shall remain firm for the Certification Term or any remainder of the Certification Term after a price increase or decrease is approved by Procurement Commission ~~Staff~~.

11.2. *Request for Price Increase.*

A request for a price increase of a certified product shall be submitted in writing by

TRICOR or CMRA to the Certification Committee. TRICOR or CMRA must also submit sufficient documentation to justify the increased price.

### 11.3. *Documentation Required for a Price Increase.*

The following must be submitted by TRICOR or CMRA to the Certification Committee as documentation to justify the increase in price:

- The cost of raw material, labor, overhead and any profit before the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- The cost of raw material, labor, overhead and any profit after the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- Any other information, upon request of the Certification Committee.

### 11.4. Certification Committee Review of the Request.

The Certification Committee shall conduct a survey of private industry, and such other documentation supplied by TRICOR or CMRA, to determine the cost of comparable products or services to which the Certification Committee's review of the price increase will be compared for reasonableness and meeting the fair market price criteria for TRICOR or CMRA.

### 11.5. ~~Committee~~ Recommendation of Price Increase.

~~The Committee~~ CMRA or TRICOR will make recommendations ~~regarding, with appropriate justification to the Certification Committee. The~~ acceptance or rejection of a price increase ~~to Procurement Commission Staff will be~~ based upon whether the price increase is ~~supported by the work center's costs and whether those cost are~~ reasonable and meet the fair market criteria for TRICOR or CMRA.

### 11.6. Contingent Recommendation.

If the Certification Committee makes a contingent recommendation, the contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent terms of the recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

### ~~11.6.~~11.7. Approval of Pricing Change.

~~Procurement Commission Staff~~Certification Committee approval is required for a price increase to any product or service from the certified product's catalog or certified service, and such approval shall be reported to the Procurement Commission.

11.7.11.8. *Effective Date of Price Increase.*

Price increases, when approved, will be effective on the first day of the following month. No increase shall be effective until approved by the ~~Procurement Commission Staff~~Certification Committee. Approval of any price increase will remain in effect for the remainder of the Certification Term. Price increases for products or services will be entered into Edison.

~~11.8.11.9.~~ *Price Increase Rejection.*

When the ~~Procurement Commission Staff~~Certification Committee rejects a request for a price increase, TRICOR and CMRA ~~will be notified of the Procurement Commission Staff's~~ decision prior to the first of the following month. TRICOR ~~or~~ CMRA ~~has the option of continuing with the current price or modifying the price and being subject to decertification.~~

~~11.9.11.10.~~ *Certified Product or Service Price Decrease, Notice of Price Decrease,*

TRICOR or CMRA shall report to ~~Procurement Commission Staff~~the Certification Committee price decreases ~~of certified products or services immediately upon receipt or realization of the decrease, and the price shall be proportionately reduced based upon the decrease.~~

~~11.10.11.~~ *Effective Date of Price Decreases.*

Price decreases will be effective on the first day of the following month ~~upon receipt of notice,~~ and will be updated in Edison.

**Related Statutes, Rules and Policies**

- TCA § 41-22-118
- TCA § 41-22-119
- TCA § 41-22-120
- TCA § 41-22-122
- TCA § 41-22-124
- TCA § 71-4-701
- TCA § 71-4-702
- TCA § 71-4-703
- TCA § 71-4-704
- TCA § 71-4-705

**POLICY NUMBER 2013-005,  
CERTIFICATION OF GOODS AND  
SERVICES RECOMMENDED BY THE  
CENTRAL NONPROFIT AGENCY OR  
TRICOR POLICY AND PROCEDURES**

**CLEAN**

**Policy Number 2013-005**  
**Central Procurement Office**  
**Certification of Goods and Services Recommended by the Central Nonprofit Agency or**  
**TRICOR**  
**Policy and Procedures**

**Effective:** May 28, 2013  
**Last Amended:** June 21, 2023  
**Prepared by:** The Central Procurement Office of the State of Tennessee

**1. Purpose.**

To establish certification procedures related to TRICOR, CMRA, certification of products, reevaluation of a certified product or service, decertification, certified service change, product design or composition change, certified product or service price increase/decrease for commodities and services that have been recommended by a Tennessee Central Nonprofit Agency or TRICOR as suitable for procurement by state entities.

**2. Scope.**

These policies and procedures apply to all procurements, contract awards, and amendments to such awarded contracts related to a certified good or service provided by a Tennessee Central Nonprofit Agency or TRICOR.

**3. Definitions.**

For purposes of this policy, the following terms shall have the meanings described below:

“Certification” – means the process by which goods or services are certified of satisfactory quality, reasonable in price, and commercially available pursuant to procedures approved by the Procurement Commission. A certification shall expire after three hundred sixty-five (365) days.

“Certification Committee”- means the committee defined by Section 4.3, Membership, of this Central Procurement Office Policy 2013-005. The Certification Committee may receive requests for Certification by the Tennessee Central Nonprofit Agency, pursuant to Tenn. Code Ann. § 71-4-704 or by the TRICOR Board, pursuant to Tenn. Code Ann. § 41-22-119.

“Certification Term” – means the one (1) year term following the effective date of a Certification.

“CMRA”- Community Rehabilitation Agencies of Tennessee- the Tennessee Central Nonprofit Agency designated by the advisory committee as described in Tenn. Code Ann. § 71-4-703 for fulfillment of government orders for commodities or services.

“Competitive Integrated Employment” – means employment available to individuals with severe disabilities or customized employment available to individuals with severe disabilities, at a setting typically found in the community, at minimum wage or greater with the same benefits as nondisabled employees receive, in which eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

“Fair Market Value” - means a price for goods or services at which buyers and sellers with a reasonable knowledge of all pertinent facts, and not acting under any compulsion to buy or sell, are willing to transact business.

“Procurement Commission”- means the State entity created and empowered by Tenn. Code Ann. § 4-56-102.

“Tennessee Central Nonprofit Agency” – means the agency designated by the Committee and shall include the functions and operations as set forth in Tenn. Code Ann. § 71-4-704.

“TRICOR”- means the Tennessee Rehabilitative Initiative in Correction, the inmate program described in Tenn. Code Ann. § 41-22-402.

#### **4. Policy and Procedure – Certification Committee.**

##### *4.1. Procedure.*

TRICOR and CMRA may request Certification of certain goods or services. The Certification Committee advises the Procurement Commission regarding the "Certification" of articles and services.

Pursuant to TCA §§ 41-22-119, *et seq.*, all departments, institutions, agencies and political subdivisions of this state, that are supported in whole or in part by the state shall purchase from the TRICOR board all articles required by these departments, institutions, agencies or political subdivisions of the state that are produced, repackaged, assembled, warehoused or manufactured by TRICOR with the labor of inmates confined within the institutions or elsewhere employed within this state; provided, that the articles are certified pursuant to procedures approved by the Procurement Commission as being of satisfactory quality, being reasonable in price and available.

Pursuant to TCA § 71-4-703 every governmental entity that is supported in whole or in part by the general assembly may purchase all services or commodities required by the governmental entity from the central nonprofit agency as long as commodities or services purchased by state governmental entities are certified pursuant to procedures approved by the Procurement Commission and are available, and commodities or services purchased by political subdivisions are certified by the chief financial officer of the political subdivision.



While the procurement of certified articles or services are not subject to competitive requirements, certified articles and services must nonetheless be competitive with available goods or services generally available in the marketplace in terms of price and quality.

4.2. *Establishment of Policies and Procedures.*

The Certification Committee may establish certain policies and procedures, as approved by the Procurement Commission, for the effective implementation of the Certification program. Revisions to this policy shall be submitted to the Procurement Commission for approval.

4.3. *Membership.*

The Certification Committee shall be comprised of a representative from the TRICOR board (voting member), CMRA of Tennessee (ex-officio only), the Departments of General Services and Finance and Administration, and the Office of the Comptroller of the Treasury as follows:

- Finance and Administration- Voting Member
- Comptroller- Voting Member
- General Services- Voting Member
- TRICOR- Voting Member
- CMRA- Ex-Officio Member

The representative from The Department of Finance and Administration shall serve as the Certification Committee Chairperson, who will have the following duties:

- To preside at all meetings of the Certification Committee;
- To insure that the functions of the Certification Committee as described in legislation and regulations are carried out;
- To promote the Certification Committee's continuous cooperative working relationship with state government and political subdivisions;
- To serve as official spokesperson for the Certification Committee in all activities for which the Certification Committee may deem necessary; and
- To provide direction, support, and guidance to the nonprofit work centers in interpreting or fulfilling Certification Committee activities.

The representative from the Office of the Comptroller of the Treasury shall serve as the Certification Committee Vice-Chairperson.

The representative from the Department of General Services shall serve as the Certification Committee Secretary, who will have the following duties:

- Schedule Certification Committee meetings;
- Follow-up and coordinate TRICOR or CMRA agenda items for Certification Committee

- meetings;
- Record, prepare, and submit Certification Committee meeting minutes and product or service request recommendations and rejections, along with supporting data submitted by TRICOR and CMRA for review by the Certification Committee; and,
- Prepare and submit notes to the Procurement Commission.

## **5. TRICOR.**

### *5.1. Generally.*

Products that are produced, repackaged, assembled, warehoused or manufactured by TRICOR with the labor of inmates confined within institutions or elsewhere employed within the State shall be considered for Certification; provided, that the articles are certified pursuant to procedures approved by the Procurement Commission as being of satisfactory quality, being reasonable in price and available.

### *5.2. Establishment of Policies and Procedures.*

TRICOR, at its expense, will defend any suit that may be brought against the State to the extent that the suit is based on a claim that the goods certified by the Procurement Commission and purchased by State agencies infringes on a United States patent. TRICOR shall pay those costs and damages that are attributable to infringement claims and finally awarded against the State.

The Certification Committee may, when it deems appropriate, contact persons and agencies independent of TRICOR in order to gather information concerning the price, quality and availability of the products proposed for certification.

The Certification Committee shall meet once a month, or as needed, to evaluate the products upon which a formal request for product certification has been made by TRICOR. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Certification Committee by TRICOR.

Each certified product shall be reevaluated by the Certification Committee beginning approximately thirty (30) days prior to the end of the Certification Term to determine if the product should either continue to be certified or be recommended for decertification.

The price of a product formally requested to be certified by TRICOR shall be based upon a "Fair Market Value." The cost may be established by submitting the cost of providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

## 6. CMRA.

### 6.1. *Generally.*

The purpose of this program as set forth in Tenn. Code Ann. § 71-4-701, is to further the policy of the state to encourage and assist individuals with severe disabilities to achieve maximum personal independence through useful, productive, and gainful employment by assuring expanded Competitive Integrated Employment opportunities, thereby enhancing their dignity and capacity for self-support and realizing independence and self-sufficiency. CMRA is currently designated as the Tennessee Central Nonprofit Agency to fulfill orders under this program.

### 6.2. *Establishment of Policies and Procedures.*

In accordance with Title 71, Chapter 4, Part 7 of the Tennessee Code, as amended, the price of a product or service formally requested to be certified by CMRA shall be based upon the fair market price of the product or service.

The Certification Committee will report recommendations based upon its finding(s) to the Procurement Commission. No products or services shall be certified until approved by the Certification Committee.

The Certification Committee may, when it deems appropriate, contact persons and agencies independent of CMRA in order to gather information concerning the price, quality and availability of the products or services proposed for Certification.

The Certification Committee shall meet once a month, or as needed, to evaluate the products or services upon which a formal request for product or service certification has been made by CMRA. In addition to the formal request, supporting data in accordance with these procedures for the determination of quality, price and availability shall be submitted to the Certification Committee by CMRA.

Each certified product or service shall be reevaluated by the Certification Committee beginning approximately thirty (30) days prior to the end of the Certification Term to determine if the product or service should either continue to be certified or be recommended for decertification.

The price of a product formally requested to be certified by CMRA shall be based upon a Fair Market Value. The cost may be established by submitting the cost of

providing the products and the basis and justification for each cost item, and by establishing that the price is competitive with the costs of comparable products.

## **7. Certification of Products.**

### *7.1. Formal Request.*

TRICOR and CMRA shall submit to the Certification Committee formal requests for product and service Certifications along with supporting data regarding quality, price and availability. The following is required for each product and service submitted for Certification:

- Product or service name
- General description of product or service
- Current Edison item number, if applicable
- An identification of the agencies that would benefit from TRICOR's or CMRA's product or service offering
- Packaging of the product
- Additional information, if requested by the Certification Committee

The following documentation is required, if applicable, for each product or service submitted in order for the Certification Committee to review the quality of the product or service offered:

- Product or service specifications
- Materials or chemical composition and the approximate amount of usage of each for unit of production
- Product warranties (e.g., warranty against defects; warranty as to fitness for purpose)
- Description of inspection program
- Description of quality control program
- Production time
- Description of assembly or mix process
- Independent laboratory evaluation, as may be requested by the Certification Committee
- Additional information, as may be requested by the Certification Committee
- Submit product sample, as may be requested by the Certification Committee

The following documentation is required, if applicable, for each product or service submitted in order to review the price of the product or service:

- Unit of measurement
- Unit price
- Breakdown of unit price by cost of supplies, labor, factory overhead, and profit, if applicable
- Supply copies of invoices to support the cost of supplies, and calculations of any factory overhead or profit applied, if requested by the Certification Committee
- Costs associated with delivery and any other associated delivery costs, and who

- will be responsible for payment
- Estimated annual sales volume based upon price
- Minimum order quantities
- Volume or any other discounts offered for the purchase of the product or service
- Supply pricing on at least three (3) comparable products or services from three different companies, if possible. If it is not possible to supply pricing for at least three (3) comparable products or services from three (3) different companies, a memorandum must be supplied justifying why it is impossible to obtain at least three (3) comparable prices. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified. The cost of comparable products should take into account volume discounts and other pricing structures used in private industry. The price of comparable products should be F.O.B. destination, unless otherwise stipulated.
- Any other special requirements or terms and conditions

The following documentation is required, if applicable, for each product or service submitted in order to review the availability of the product or service:

- Description of the delivery terms, including, but not limited to: destinations to which TRICOR or CMRA will not deliver and the means of delivery
- Delivery time (from point the order is received until reaching delivery destination)
- Description of Return Goods Policy
- Specific conditions under which a restocking charge will be levied and how much that charge will be
- A survey of three (3) companies from which comparable prices were obtained to determine the time in which the private sector could supply comparable products to the State. The survey should take into account the quantity ordered and the complexity of the product or service.

## 7.2. *Certification Committee Review.*

### 7.2.1. *Quality, Price, Availability.*

Certification Committee review will be based upon, but not be limited to, the documentation required to be submitted to the Certification Committee. If requested by the Certification Committee, TRICOR or CMRA will submit, as part of its quality report, an independent laboratory evaluation of a given certified product. The program for evaluation will include a product comparison chart that establishes brands or models manufactured by the private sector, which are comparable to the products submitted by TRICOR or CMRA for Certification. The review will involve a determination as to whether the quality is satisfactory or meets the State's standards for quality.

The Certification Committee will review the price of the three (3) comparable products. If TRICOR's or CMRA's price is higher than comparable products or services, the Certification Committee will require documentation of costs. The Certification Committee will determine whether the TRICOR or CMRA pricing is at fair market value based on the documentation provided by TRICOR or CMRA or such other information as may be available relating to price or quality of the good or service for which certification is sought.

The survey conducted by TRICOR or CMRA will be used to compare the delivery time of TRICOR or CMRA in order to determine if the product can be supplied within a reasonable time frame. The Certification Committee review will also be based upon other documentation required to be submitted to the Certification Committee per the Formal Request Section.

#### *7.2.2. Certification Committee Recommendation to the Procurement Commission Form of Recommendation.*

The Certification Committee's recommendation to certify or not certify the product or service will be submitted prior to Procurement Commission meetings and documented in the Certification Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR or CMRA shall be used to support the Certification Committee's review of price, quality and availability.

#### *7.2.3. Recommendation Not to Certify.*

If the Certification Committee recommends against certifying a certain product or service, the Certification Committee's recommendation shall be reported and based upon one or more of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services.
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

#### *7.2.4. Contingent Recommendation.*

If the Certification Committee makes a contingent recommendation, the contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent

terms of the recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

*7.2.5. Approval for Certification.*

Certification Committee approval is required to certify a product or service.

*7.2.6. Effective Date of Certification.*

The effective date of a product or service approved for Certification will be the date as determined by Certification Committee, which will be reported to the Procurement Commission and takes effect into the State's ERP system.

**8. Reevaluation of a Certified Product or Service.**

*8.1. Review of a Certified Product or Service by the Certification Committee.*

Each certified product or service shall be reevaluated by the Certification Committee beginning approximately thirty (30) days prior to the ending date of the Certification Term in order to determine if the product or service should either continue to be certified or not certified by the Certification Committee. The following documentation is required for each product or service being reevaluated in order to perform the end of Certification term review:

*8.2. Price.*

TRICOR or CMRA shall conduct a survey of three (3) original vendors, if possible, who were contacted for comparison of prices for Certification to determine:

- Current price for comparison to the Certification products or service price.
- If there have been any changes in the product or service since the original comparison which would account for changes in price.
- If there has been any change in market conditions or technology.

If it is not possible to supply information noted above concerning pricing from the three (3) original vendors or from at least three (3) vendors who produce the same or similar product or service, a memorandum must be supplied to the Certification Committee justifying why it is impossible. At a minimum, the documentation included in the memorandum should include the company names, dates contacted, and relevant business contact information of those vendors from whom a comparison price was sought. Documentation must also detail the alternate method used for determining the price of the product or service to be certified.

*8.3. Quality and Availability.*

The following shall be obtained for reevaluation of the certified product or service under review:

- The Complaint to Vendor file shall be obtained from the Department of General Services for review by the Certification Committee.
- A current production model shall be supplied to the Certification Committee by TRICOR or CMRA to determine if the same or better quality or production standards are being maintained.
- A list of the number of orders placed or the dollar volume of sales during the current Certification term shall be supplied by TRICOR or CMRA to the Certification Committee.

#### 8.4. *Certification Committee Recommendation.*

##### 8.4.1. *Form of the Recommendation.*

The Certification Committee's recommendation to certify or not certify the product or service will be submitted monthly to the Procurement Commission and documented in the Certification Committee's meeting minutes, including data submitted by TRICOR and CMRA. The product or service type job costing information, i.e., comparison of private sector survey data and work center costs, as well as package type, location, satisfaction, requested price, and effective date, submitted by TRICOR and CMRA shall be used to support the Certification Committee's review of price, quality and availability.

##### 8.4.2. *Recommendation Not to Recertify.*

If the recommendation from the Certification Committee is to not continue Certification of the product or service, the cause for not recommending shall be based upon any of the following criteria:

- The price is not fair taking into consideration the cost of comparable products or services..
- The quality is not satisfactory or does not meet acceptable State quality standards.
- TRICOR or CMRA cannot supply the product within a reasonable time frame.

##### 8.4.3. *Contingent Recommendation.*

If the Certification Committee makes a contingent recommendation, the contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent terms of the



recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

#### 8.4.5. *Approval for Recertification.*

Certification Committee approval is required for recertification upon reevaluation of the Certified product or service with reporting of such approval to the Procurement Commission.

### 9. **Decertification.**

#### 9.1. *Conditions for Decertification.*

Certified products or services are subject to decertification when one of the following conditions exists:

- A sufficient number of complaints are issued by an agency relating to the unavailability or poor quality of the products or services at issue.
- Design modifications or changes in material were made by TRICOR or CMRA that diminish the quality of the product.
- Price increases are requested by TRICOR or CMRA that are not supported by the work center's costs, and are beyond the current fair market price for comparable products or services.
- By request of TRICOR or CMRA upon supplying reasonable justification for decertification.
- Submission of sufficient criteria for not recommending recertification during the reevaluation process.

#### 9.2. *Certification Committee Recommendation.*

The Certification Committee will make recommendations regarding decertification to Procurement Commission based upon at least one of the conditions listed in the Decertification Section.

#### 9.3. *Approval of Decertification.*

Certification Committee approval is required to remove a product from the certified products catalog or to decertify a service. Any products or services that are decertified by Certification Committee will be reported to the Procurement Commission.

### 10. **Changes to Certified Goods or Services.**

#### 10.1. *Requests to Change Certification for Goods or Services.*

All requests for any design, composition, or other significant changes or modification

to any product or service that has been certified must be submitted in writing by TRICOR or CMRA to the Certification Committee within thirty (30) days prior to the scheduled change or modification as an addendum.

#### 10.2. *Documentation Required for Approval.*

TRICOR or CMRA must also submit the following together with its request for a change:

- Complete documentation of the nature of the change or modification.
- The reason for the change or modification.
- Any changes in price, quality or availability information submitted with the original request for Certification.
- A list or primary customers of the certified product to be changed.

#### 10.3. *Certification Committee Review of Change.*

The Certification Committee will review the change in the product or service to determine if the change has affected the quality, price or availability as currently certified.

#### 10.4. *Causes for Rejection of Change.*

If any one of the following occurs, it will be cause for not recommending a change in the product or service:

- The price change is beyond the current fair market value price for comparable goods or services.
- The quality of the product or service has been lessened and is no longer satisfactory or no longer meets the State's quality standards.
- The good or service can no longer be supplied within a reasonable time frame.

#### 10.5. *Certification Committee Recommendation.*

The Certification Committee will make recommendations regarding acceptance or rejection of a change to a certified good or service to Procurement Commission based upon information supplied as required in Policy and Procedure- Certified Service Change, Product Design, or Composition Change section.

If the Certification Committee makes a contingent recommendation, the contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent terms of the recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

10.6. *Approval of Change.*

Certification Committee approval is required for a design, composition, or other significant changes or modifications to any product from the certified products catalog or certified service and shall be reported to the Procurement Commission.

10.7. *Disapproval of Change to a Certified Product or Service.*

If the Certification Committee disapproves the modification, TRICOR or CMRA has the option of continuing with the currently certified product or service or modifying the product or service and being subject to decertification.

11. **Policy and Procedure - Certified Product or Service Price Increase or Decrease.**

11.1. *Conditions for Price Increase or Decrease for Certified Product or Service Firm Price Period.*

Prices for goods or services certified by Procurement Commission shall remain firm for the Certification Term or any remainder of the Certification Term after a price increase or decrease is approved by Procurement Commission.

11.2. *Request for Price Increase.*

A request for a price increase of a certified product shall be submitted in writing by TRICOR or CMRA to the Certification Committee. TRICOR or CMRA must also submit sufficient documentation to justify the increased price.

11.3. *Documentation Required for a Price Increase.*

The following must be submitted by TRICOR or CMRA to the Certification Committee as documentation to justify the increase in price:

- The cost of raw material, labor, overhead and any profit before the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- The cost of raw material, labor, overhead and any profit after the price increase for one (1) unit of production of the product or service for which the increase is requested, along with supporting documentation such as, but not limited to, supplier's invoices, calculations of labor costs, overhead, and profit.
- Any other information, upon request of the Certification Committee.

11.4. *Certification Committee Review of the Request.*

The Certification Committee shall conduct a survey of private industry, and such other documentation supplied by TRICOR or CMRA, to determine the cost of

comparable products or services to which the Certification Committee's review of the price increase will be compared for reasonableness and meeting the fair market price criteria for TRICOR or CMRA.

11.5. *Recommendation of Price Increase.*

CMRA or TRICOR will make recommendations, with appropriate justification to the Certification Committee. The acceptance or rejection of a price increase will be based upon whether the price increase is reasonable and meet the fair market criteria for TRICOR or CMRA.

11.6. *Contingent Recommendation.*

If the Certification Committee makes a contingent recommendation, the contingent recommendation shall be limited to needing additional information or for correction of administrative errors regarding pricing, spelling, or confirmation of information. The contingent recommendation shall be satisfactorily resolved within two business days and approved by the Certification Committee. Alternatively, if the contingent terms of the recommendation are not met and approved by the Certification Committee within the allowed time, the item will be automatically moved to the next Certification Committee meeting.

11.7. *Approval of Pricing Change.*

Certification Committee approval is required for a price increase to any product or service from the certified product's catalog or certified service, and such approval shall be reported to the Procurement Commission.

11.8. *Effective Date of Price Increase.*

Price increases, when approved, will be effective on the first day of the following month. No increase shall be effective until approved by the Certification Committee. Approval of any price increase will remain in effect for the remainder of the Certification Term. Price increases for products or services will be entered into Edison.

11.9. *Price Increase Rejection.*

When the Certification Committee rejects a request for a price increase, TRICOR and CMRA will be notified of the decision prior to the first of the following month. TRICOR or CMRA has the option of continuing with the current price or modifying the price and being subject to decertification.

11.10. *Certified Product or Service Price Decrease, Notice of Price Decrease.*

TRICOR or CMRA shall report to the Certification Committee price decreases of certified products or services immediately upon receipt or realization of the decrease, and the price shall be proportionately reduced based upon the

decrease.

11.11. *Effective Date of Price Decreases.*

Price decreases will be effective on the first day of the following month upon receipt of notice and will be updated in Edison.

**Related Statutes, Rules and Policies**

TCA § 41-22-118

TCA § 41-22-119

TCA § 41-22-120

TCA § 41-22-122

TCA § 41-22-124

TCA § 71-4-701

TCA § 71-4-702

TCA § 71-4-703

TCA § 71-4-704

TCA § 71-4-705

# **EFORM REQUEST DOCUMENTS**

**NEW**

**REQUEST:** Add the following as an additional form field on eForms in Edison:

<b>#. Agency Request Tracking Name</b> (brief description so the agency can identify)	
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