



STATE OF TENNESSEE
PROCUREMENT COMMISSION
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- REVISED AGENDA -

PROCUREMENT COMMISSION MEETING #025
THURSDAY, APRIL 27, 2017 - 2:30 P.M.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM

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LARRY B. MARTIN, Chairman
 Commissioner of Finance & Administration

JUSTIN P. WILSON
 Comptroller of the Treasury

ROBERT E. OGLESBY
 Commissioner of General Services

MICHAEL F. PERRY
 Chief Procurement Officer

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VI.	Adjournment	--

**MINUTES OF FEBRUARY 16, 2017
MEETING**

MINUTES
PROCUREMENT COMMISSION MEETING #024
THURSDAY, FEBRUARY 16, 2017 – 1:30 P.M.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM

Members in Attendance:

Larry B. Martin, Commissioner, Department of Finance and Administration; Justin P. Wilson, Comptroller of the Treasury; Robert E. Oglesby, Commissioner, Department of General Services; Mike Perry, Chief Procurement Officer

Others in Attendance:

Thad Watkins, Paul Krivacka, Don Ivancic, Bryan Chriske, Jenny Young, Meryl McVicker, Tim Drown, Stroud Vaughn, Charissa Taylor, Buddy Lea, Kyle Hunter, Maggie Wilson, Charlotte McKinney

I. Call to Order.

Commissioner Martin called the meeting to order and recognized that a quorum of Procurement Commission ("Commission") members was present.

II. Minutes from the November 1, 2016 Procurement Commission Meeting.

Commissioner Martin presented the November 1, 2016, minutes for approval and asked if there were any corrections or additions. Comptroller Wilson stated that the minutes had been reviewed by his office and appeared to be in order. Comptroller Wilson made a motion to approve the minutes from the November 1, 2016, Procurement Commission ("Commission") meeting as presented. The motion was seconded by Commissioner Oglesby; whereupon the minutes were approved.

Comptroller Wilson expressed his appreciation to the Procurement Commission members for agreeing to start the meeting 30 minutes early to accommodate his schedule.

New Business:

III. Proposed Changes to the following Central Procurement Office documents.

Commissioner Martin asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the New Business agenda items.

Mr. Krivacka indicated that all nine items on the agenda had been reviewed by the Advisory

Council on State Procurement and were recommended for approval by the Procurement Commission.

(1) *Procurement Procedures Manual of the Central Procurement Office*, Section 10.11. State Security Confidential Information

Mr. Krivacka summarized the following points with regard to *Procurement Procedures Manual of the Central Procurement Office*, Section 10.11. State Security Confidential Information:

- These changes are related to Public Act 1009 dealing with confidential information related to government property, government employee information, and citizen information. These changes will allow the Central Procurement Office (“CPO”) to create a framework by which CPO can comply with the Public Act when conducting solicitations, awarding contracts, and conducting protest hearings.

Comptroller Wilson said the changes appeared to be in order and consistent with the statute. Comptroller Wilson further commented that he hopes the State will create a culture of “when in doubt, ask” regarding such matters. Comptroller Wilson continued that there are staff in the CPO who are knowledgeable and are aware of when there may be an issue with this, but some agency staff are not as knowledgeable. Mr. Krivacka stated that a flagging system has been created on the STS Endorsement form and in Edison that requires STS to identify any solicitation that contains confidential information. Once the STS Endorsement form is checked indicating confidential information is involved, then it is also flagged in Edison. In the future any staff seeking requests or responding to requests can review it to determine whether or not the solicitation, the contract itself, or other related documents contain confidential information and then they can act accordingly.

Comptroller Wilson added that even before the step in Edison is reached there can be informal inquiries. Mr. Krivacka responded that inquiries of that nature will be handled on a case-by-case basis. Mr. Krivacka stated that many of those inquiries are related to existing contracts that have been out in the public domain for some time. The CPO will remove access to those contracts from any public-facing web sites and will respond on a case-by-case basis for requests for these documents and redact them if necessary.

Comptroller Wilson made a motion to approve the *Procurement Procedures Manual of the Central Procurement Office*, Section 10.11., State Security Confidential Information as presented.

For the benefit of the Commission, Mr. Thad Watkins, Department of General Services Legal Counsel, stated that there was some concern over interpretation of the law that passed last year, along with some vagueness and confusion on the scope and meaning of the law. As a result, a cleanup bill has been filed and Mr. Watkins, CPO staff, and others were involved in the discussions of how to clarify the bill to more closely reflect the intent. Mr. Watkins asked if the language in the proposed change to the Procurement Procedures Manual was consistent with the cleanup bill in the event that it passed.

Mr. Krivacka responded that the CPO would probably need to come back to the Procurement Commission later with some minor adjustments to the currently proposed change to the

Procurement Procedures Manual. Mr. Krivacka continued that if the new bill passed the concept of government property would be eliminated and the concept would be information systems and related terms. Mr. Krivacka stated that some minor changes would be necessary but the proposed language is mostly consistent with the proposed cleanup bill. Mr. Watkins asked if this would create any major gap problems and Mr. Krivacka indicated that it would not.

Commissioner Martin thanked Mr. Watkins for the question and recognized that Comptroller Wilson had made a motion to approve the *Procurement Procedures Manual of the Central Procurement Office*, Section 10.11., State Security Confidential Information, as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(2) Interagency Agreement Summary and Interagency Grant Agreement Summary Cover Sheets

Mr. Krivacka summarized the following points with regard to the Interagency Agreement Summary and Interagency Grant Agreement Summary Cover Sheets:

- This proposal is for a minor change to add a field on the summary cover sheet for the Edison Supplier ID as a matter of convenience. It provides additional information for reference.

Seeing no questions or comments, Comptroller Wilson made a motion to approve the Interagency Agreement Summary and Interagency Grant Agreement Summary Cover Sheets as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

Mr. Krivacka asked if the Commission had any objections to hearing agenda items (3) and (4) together as they are related. Seeing no objections from Commission members, Mr. Krivacka continued.

(3) *Procurement Procedures Manual of the Central Procurement Office*, Section 11.2, General Information

(4) Model Instructions for GU-RV, GU-NC, GU, GU-USGS, RV, NC

Mr. Krivacka summarized the following points with regard to agenda item (3) *Procurement Procedures Manual of the Central Procurement Office*, Section 11.2, General Information, and agenda item (4) Model Instructions for GU-RV, GU-NC, GU, GU-USGS, RV, NC:

- In an effort to bring uniformity to all CPO contract documents, agenda item (3) deals with instructions to model contracts. For background information, Mr. Krivacka stated there are two types of contracts; model contracts, which can be customized, and template contracts, which cannot be customized except through a Rule Exception Request ("RER").
- In reviewing some of the models, the CPO found a lack of compliance with Rule 17 of CPO rules with respect to contracts based on the model contracts. The CPO felt that it was necessary to require a RER for changes to certain terms and conditions within the model contracts so that the State did not inadvertently agree to something that was

against the law. If a mandatory provision is changed or if a prohibited provision is added, a Rule Exception Request would be required for review by the CPO. If the request contained in the RER would cause harm to the State's best interest, the RER would be denied. If the request would cause no harm it would be approved and the State agency would move forward.

- This would affect a very small group of contracts that are typically No Cost contracts or Revenue contracts – not typically contracts for the purchase of goods and services.
- Agenda item (4) revises the instructional text included in the models to mirror the updated Procurement Procedures Manual. An asterisk was added to note that use of this model requires an approved Special Contract Request. This was recommended by the Office of the Comptroller of the Treasury (“COT”) to serve as a reminder that a Special Contract Request is required for Revenue and No Cost contracts with non-governmental entities.

Mr. Krivacka stated that in discussions with the COT there was a question pertaining to agenda item (4) as it relates to the United States Geological Survey (“USGS”) model. Changes to this model were negotiated between the federal government, State Audit, and others. Mr. Krivacka reported that these changes were making their way through the CPO Policy Review Subcommittee process and added that the CPO thought that COT's suggestion that this document become a template so that it can only be changed through a Rule Exception Request was a great idea. A lot of work went into this document to make sure that it met everyone's needs and the last thing that the CPO wants is too much customization of the document. Mr. Krivacka continued that the document will go to the CPO Policy Review Subcommittee and then will be brought before the Advisory Council on State Procurement. In addition to adopting the changes that State Audit and the federal government requested, the CPO will also ask that the document be considered as a template.

Commissioner Martin asked if there was any additional discussion in regard to agenda items (3) and (4). Comptroller Wilson asked if the vote on the USGS model should be taken at this point or after it comes back from the Advisory Council. Mr. Krivacka responded that his preference would be to wait on the vote on the USGS model until a recommendation is proposed by the Advisory Council.

Comptroller Wilson made a motion to approve agenda item (3) *Procurement Procedures Manual of the Central Procurement Office*, Section 11.2, General Information, and agenda item (4) Model Instructions for GU-RV, GU-NC, GU, GU-USGS, RV, NC, with the exception of the GU-USGS model which will be presented to the Procurement Commission at a later date. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(5) Governmental Grant (“GG”) and Grant (“GR”) Templates C.6. Option 5 – Budget Line-Item Issue

Mr. Krivacka presented the following points with regard to Governmental Grant (“GG”) and Grant (“GR”) Templates C.6 Option 5 – Budget Line-Item Issue:

- This proposal will provide more budgeting flexibility for grant contracts. Agencies will be able to decide which circumstances and justifications merit shifting line item allocations in the grant budget. Agencies will be able to permit variances from line

item amounts in response to market factors and other unforeseen issues without the delays and formalities of an amendment to the grant contract. By the same token, agencies will be able to deny line item variances when the agency believes that a variance would endanger the grantee's ability to adequately perform the grant contract's scope of services.

Commissioner Martin asked if there was any discussion in regard to agenda item (5). Comptroller Wilson stated that this proposal has been used successfully by the Department of Transportation and made a motion to approve Governmental Grant ("GG") and Grant ("GR") Templates C.6 Option 5 - Budget Line-Item Issue as presented. Commissioner Oglesby stated that he liked the flexibility that this will offer and seconded the motion; whereupon the item was approved.

(6) Governmental Grant ("GG"), Grant ("GR"), and FA Templates - Iran Divestment Act

Mr. Krivacka presented the following points with regard to Governmental Grant ("GG"), Grant ("GR"), and FA Templates - Iran Divestment Act:

- This proposal relates to CPO efforts to provide symmetry between the Iran Divestment Act requirements that are in the FA template and the Iran Divestment Act requirements that are also in the Edison configurator. This proposal will make the Iran Divestment Act requirements applicable to Grant contracts.

Comptroller Wilson stated that this is federal law and made a motion to approve the Governmental Grant ("GG"), Grant ("GR"), and FA Templates - Iran Divestment Act as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(7) Central Procurement Office Policy No. 2013-007, *Grant Management and Subrecipient Monitoring Policy and Procedures*

Mr. Krivacka summarized the following points with regard to Central Procurement Office Policy No. 2013-007, *Grant Management and Subrecipient Monitoring Policy and Procedures*:

- Approximately five years ago when the CPO was started and grant responsibilities were given to the CPO there were still a number of responsibilities that remained in F&A. This proposal will fully shift to the CPO the determination of the cognizant state agency determination. There are numerous references to F&A's Policy 3 that will be deleted because Policy 3 longer applies to grant management.

Comptroller Wilson stated that this is a major issue across all state government and added that this is a real challenge and responsibility for the CPO as it is a major undertaking. Comptroller Wilson stated that his office is willing to assist in whatever way needed and added that the State has been criticized by the federal government for this issue. Comptroller Wilson stated that this proposal is good for the State and encouraged the CPO to devote adequate resources to it.

Comptroller Wilson made a motion to approve Central Procurement Office Policy No. 2013-007, *Grant Management and Subrecipient Monitoring Policy and Procedures* as presented. Commissioner Martin concurred with Comptroller Wilson's remarks and seconded the motion; whereupon the item was approved.

(8) *Procurement Procedures Manual of the Central Procurement Office, Section 6.9 Meeting Expenses*

Mr. Krivacka summarized the following points with regard to *Procurement Procedures Manual of the Central Procurement Office, Section 6.9 Meeting Expenses*:

- In CPO's efforts to clarify meeting expenses; how they are paid and how the State enters into contracts, the CPO is making it very clear that an agency that wants to pay expenses for meeting space should exercise their Local Purchase Authority to do so. For meeting expenses \$10,000 and under the agency simply needs to find the proper venue; for meeting expenses \$10,000.01 through \$50,000 the agency would get three quotes; and for meeting expenses over \$50,000 the agency would have to use another procurement vehicle to award a contract.

Commissioner Martin asked if this proposal was just to provide consistency. Mr. Krivacka responded that there has been some confusion regarding if an agency could use a P-Card to pay for meeting expenses without a contract. Mr. Krivacka stated that this proposal also deals with the issue of the actual venue's standard agreement. The State realizes that in most cases, the venue will not agree to the State's standard terms and conditions. This proposal allows the venue's standard agreement to be an acceptable form for binding the parties so long as it has been reviewed by agency attorneys. Mr. Krivacka added that he had a discussion with COT regarding their question of how to handle agencies that do not have in-house counsel to review the venue agreements. Mr. Krivacka indicated that any agency that does not have in-house counsel would be encouraged to reach out to the CPO legal staff for guidance. Commissioner Martin stated that getting assistance from the CPO legal staff seems like a reasonable solution.

Seeing no other questions or comments, Comptroller Wilson made a motion to approve *Procurement Procedures Manual of the Central Procurement Office, Section 6.9, Meeting Expenses* as presented. Commissioner Oglesby seconded the motion; whereupon the item was approved.

(9) *FA Template – optional language for protection of Federal Tax Information*

Mr. Krivacka summarized the following points with regard to the *FA Template – optional language for protection of Federal Tax Information*:

- This proposal deals with the recent revision of Internal Revenue Service ("IRS") Publication 1075 dealing with taxpayer information security guidelines for federal, state, and local agencies. The CPO is making changes to the standard language in the *FA Template* to bring it into compliance with IRS Publication 1075.

Seeing no questions or comments, Comptroller Wilson made a motion to approve FA Template – optional language for protection of Federal Tax Information as presented. Commissioner Oglesby seconded the motion; whereupon the item was approved.

Commissioner Martin thanked Mr. Krivacka for presenting the New Business items and moved to the next agenda item.

IV. Reports:

Chief Procurement Officer Perry presented the following standard reports for informational purposes:

- 1) Certification Related Items – lists any recertifications, new certifications, and decertifications since last Procurement Commission meeting
- 2) Limitation of Liability – three granted since last Procurement Commission meeting
- 3) Correction of Errors – no report this period
- 4) Memorandum of Understanding – one MOU with Utility Data Energy Management that simply altered the payment schedule

Mr. Perry stated that these reports simply needed to be acknowledged by the Commission and that no action was needed; whereupon Commissioner Martin acknowledged receipt of the reports.

Comptroller Wilson pointed out that the contract with AT&T for NetTN Systems does have a limitation of liability that is not typical, but given the amount of the contract it is inconsequential.

Seeing no additional comments or questions, Commissioner Martin thanked Mr. Perry and noted that the reports had been acknowledged for the record.

V. Other Business.

Commissioner Martin asked if there was any other business to be heard by the Procurement Commission and saw none.

VI. Adjournment.

Seeing no other business to be heard, a motion to adjourn was made by Comptroller Wilson and seconded by Commissioner Oglesby; whereupon the February 16, 2017 Procurement Commission meeting was adjourned.

REVENUE (RV) AND NO COST (NC) MODELS

REQUEST: Revise the Records clause included in the Revenue (RV) and No Cost (NC) Models as follows:

RV Model:

D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

NC Model:

D.9. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State, the Comptroller of the Treasury, or their duly appointed representatives.

**CLICK-WRAP AGREEMENT APPROVAL
REQUEST**

Click-wrap Agreement Approval Request

Procurement professionals should use this document to seek approval to enter into or renew a click-wrap agreement associated with a proposed purchase made under an Agency’s local purchase authority. This Request will typically be utilized for licenses of software, internet-based services or computer services. See sections 4.1. and 5.15.3.3. of the *Procurement Procedures Manual of the Central Procurement Office* for more information about click-wrap agreements. This document cannot be used to modify an existing contract, even a contract executed under an Agency’s local purchase authority. A Special Contract Request will not be required for any agreement with a total dollar value under the small purchase authority threshold. For new click-wrap agreements, send a copy of the proposed click-wrap agreement along with a completed Request in PDF format to Agsprs.agsprs@tn.gov. If this is a renewal, please also include a copy of the previously approved click-wrap agreement. Approved Click-Wrap Agreement Requests and supporting documents must be maintained with the procurement file.

APPROVED	APPROVED
CENTRAL PROCUREMENT OFFICE	STRATEGIC TECHNOLOGY SOLUTIONS
DATE	DATE

Agency Tracking #	
1. Procuring Agency and Agency Contact (include name and email address)	
2. Supplier Name and ID #	
3. Supplier Contact (Include name and email address to where proposed changes can be sent.)	
4. Click-wrap agreement’s proposed Effective Date (This is the anticipated date for entering into the click-wrap agreement.)	
5. Click-wrap agreement’s proposed End Date	
6. Name and description of goods or services	

For Renewals Only

<p>Confirm that there is a valid renewal option remaining in the contract and confirm that there has been no other change to the agreement’s terms and conditions. <i>– If there is not a valid renewal or extension option remaining in the agreement, submit as a new click-wrap agreement or contract instead. (Note: the term cannot exceed sixty (60) months without an approved Rule Exception Request and Contract Amendment.)</i></p>	<p>Confirm that all necessary due diligence has been performed and it is in the State’s best interest to renew or extend the contract. – <i>Considering such items as contractor performance, pricing, etc.</i></p>	<p>Confirm this renewal or extension does not increase the total dollar value above amounts approved for local purchase authority.</p>
YES <input type="checkbox"/>	YES <input type="checkbox"/>	YES <input type="checkbox"/>

***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE***

**SECTION 5.1.1., ELECTRONIC
SIGNATURES AND APPROVALS**

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

5.1. *Procurement Personnel.*

Procurement personnel responsible for procuring the State's goods and services include the Chief Procurement Officer and all persons acting on behalf of the Chief Procurement Officer, whether such persons are located in the Central Procurement Office, within a State Agency or under a Delegated Authority.

5.1.1. *Electronic Signatures and Approvals*

In accordance with the State's Uniform Electronic Transactions Act, Tenn. Code Ann. § 47-10-102, et seq. and the policy of the State Information System Council, any State employee or designee of a State employee who has been authorized by his or her respective State Agency to sign procurement documents may provide an Electronic Signature or electronic approval in order to constitute a binding agreement. An electronic approval or Electronic Signature shall be permissible in the following situations:

For Requisitions:

An Electronic Signature or electronic approval shall be an acceptable form of approval for procurement documents at the following State Agency workflow levels:

- Level 1 (\$.01 to \$10,000)
- Level 2 (\$10,000.01 to \$50,000)
- Level 3 (over \$50,000)
- By the State Agency P-Card Approver when P-Card is present
- Finance and Administration—Assets
- Finance and Administration—Office for Information Resources
- Finance and Administration—Budget
- Department of Human Resources
- Department of General Services Printing

- Department of General Services Postal
- Department of General Services—Central Procurement Office

For Purchase Orders:

An Electronic Signature or electronic approval shall be an acceptable form of approval for procurement documents at the following State Agency workflow levels:

- Level 1 (\$.01 to \$10,000)
- Level 2 (\$10,000.01 to \$50,000)
- Level 3 (over \$50,000)
- Finance and Administration—Assets
- Department of General Services—Central Procurement Office
- Comptroller of the Treasury

***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE***

**SECTION 6.4.2.1., DESCRIPTION OF
INFORMAL PURCHASE**

REQUEST: Revise section 6.4.2.1. of the *Procurement Procedures Manual of the Central Procurement Office* as follows:

6.4.2.1. *Description of Informal Purchase.*

State procurement professionals shall use competitive methods whenever practicable. State Agencies may utilize their Informal Purchase authority by soliciting quotes or proposals from at least three (3) vendors when the total value of a contract or a purchase will cost less than such amounts approved by the Procurement Commission. A current website, catalogue, price list, or price available at retail to the general public may count as a quote. A Special Contract Request is not required if the procurement professional undertakes reasonable efforts to obtain the requisite three (3) quotes and these efforts have been sufficiently documented to the procurement file. State procurement professionals shall also perform due diligence to ensure that the State is procuring goods and services on terms, conditions, and pricing that is in the State's best interests. All due diligence performed by a state procurement professional shall be documented and made a part of the procurement file. State procurement professionals should follow *Manual, Section 5.4.2*, to identify prospective vendors of goods or services. State procurement professionals should also consult *Section 10.1* of the *Manual* and actively solicit goods and services from minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses when possible. Agency purchasing professionals shall obtain the Chief Procurement Officer's prior approval for procuring goods or services from sources other than a Statewide Contract when the goods or services to be procured are available from an existing Statewide Contract. In allowing a State Agency to purchase other than "off" of a Statewide Contract, the Chief Procurement Officer may consider, by way of example only, a Contracting Party's past performance, timeliness of performance, the Contracting Party's ability to supply the goods or services, pricing, quality or compatibility concerns. See *Manual, Section 10.4. Purchases Made "Off" Statewide Contract*. See also Policy Number 2013-004, *Central Procurement Office Contract Management Policy and Procedures, Section 4.2.3*.

PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE
SECTION 6.9., MEETING EXPENSES

REQUEST: Revise section 6.9. of the *Procurement Procedures Manual of the Central Procurement Office* as follows.

6. Exceptions to Competitive Procurements.

6.9. Meeting Expenses.

Meeting expenses may be procured under the same rules, policies, and procedures applicable for exercising Local Purchase Authority. A Special Contract Request is only required if an Agency is exceeding its Local Purchase Authority. All terms and conditions for space rental should be reviewed by Agency legal counsel if available; if not, CPO Legal.

**FA TEMPLATE – TRANSFER OF
OWNERSHIP OF CUSTOM SOFTWARE
DEVELOPED FOR THE STATE**

REQUEST: Move the Ownership of Software & Work Products optional term towards the end of optional terms and conditions and revise the heading and instructions included in the FA Contract Template as follows.

Transfer of Ownership of Custom Software Developed for the State

This section should only be added in the event the State wishes to have complete ownership of customized software and perpetual rights to use and maintain any underlining associated pre-existing software. This section shall only be used with the permission of CPO.

The terms of any license Contractor grants the State should be included in Section A of the *pro forma* contract.

E.#. Transfer of Ownership of Custom Software Developed for the State.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent

modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.

- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
- (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

**FA TEMPLATE – INTELLECTUAL
PROPERTY INDEMNITY**

REQUEST: Move the Intellectual Property higher up in the optional terms and conditions, retitle the section, and revise the instructions included in the FA Contract Template as follows.

Intellectual Property

This Section shall be used for all contracts involving computers, software, or technology related goods or services. If unsure whether the Section is applicable, consult the CPO legal team.

E.#. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

**FA TEMPLATE – LIMITATION OF
LIABILITY**

REQUEST: Add the following as an optional term in the FA Contract Template.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required. This language is allowed only if the CPO has agreed in negotiations to use of this language.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

FA TEMPLATE – INSURANCE

REQUEST: Revise the insurance options included in the FA Template as follows.

Add the following as a Mandatory Term and Condition:

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can

demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain bodily injury/property damage with a combined single limit not less than **one million dollars (\$1,000,000)** per occurrence and **two million dollars (\$2,000,000)** aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least **two million dollars (\$2,000,000)**.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars **(\$1,000,000)** per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

Revise the instructional text included in the FA Template Instructions, Considerations, and Options as follows:

Insurance Options

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "**written amount** Dollars (**\$NUMBER AMOUNT**)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;

- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

Option 2: Professional Liability Insurance

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

- d. Professional Liability Insurance
 - i. Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
 - ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$1,000,000) per claim and **two million** dollars (\$2,000,000) in the aggregate; and
 - iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **two million** (\$2,000,000) per claim and **three million** dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

REQUEST FOR PROPOSALS (RFP) TEMPLATE

REQUEST FOR PROPOSALS (RFP) STANDARD TEMPLATE

This template prescribes the format and content for a Request for Proposals (RFP). A RFP is a competitive solicitation used to award a contract based on Respondent qualifications, experience, technical approach and cost. Documents of this type must adhere to this template with revisions only as instructions permit. A Rule Exception Request is required unless the deviation is immaterial; however, even immaterial deviations are subject to disapproval.

APPROVAL INSTRUCTIONS

Each RFP must be approved for release in accordance with the instructions below. Approval is also required for any RFP amendment or RFP cancellation. For detailed guidance on contract approvals, see the Procurement Procedures Manual of the Central Procurement Office (CPO) at § 5.15.3. All references below to requisite Comptroller's Office submission and approvals should be followed only as applicable.

Procurement professionals should complete template fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name**, **amount**, **will/will not**) as indicated with appropriate font and color. The standard RFP Template begins on the following page. Additional RFP instructions, considerations, and options follow the standard RFP Template.

Procurement professionals should submit the RFP draft at least 20 business days before the desired RFP release date. (Notwithstanding compliance with this deadline, circumstances may necessitate a delay of the release date.) To prevent additional delays, any approved Rule Exception Requests, endorsements, justifications, or other required approvals must be submitted with the RFP draft. If there are any questions as to whether a Rule Exception Request is required, consult CPO staff for guidance. The RFP draft should be submitted via e-mail to: Aggsprs.Aggsprs@tn.gov as a digital file in DOC format and copy to: COT.CPC@cot.tn.gov. Each draft must:

1. be clearly marked as "REVIEW DRAFT";
2. specify a number indicating the draft version;
3. highlight all deviations from the template language; and
4. highlight any changes between draft versions that may be necessary prior to release.
 - CPO staff will: (a) review the draft and confer with procuring agency staff by means of e-mailed review notes and redrafts; and (b) e-mail the proposed document to Comptroller staff when the CPO review is completed.
 - Comptroller staff will: (a) review the draft and confer directly with CPO staff and copy procuring agency staff by means of review notes and redrafts exchanged by e-mail; and (b) e-mail approval notice to both the CPO staff and procuring agency staff when the latest draft appears acceptable for release.

PUBLICATION INSTRUCTIONS

Upon Comptroller approval, prepare the RFP for public release by removing any highlighting, changing all text to an appropriate color, and removing any draft version number or other extraneous notations. On the business day before the date approved for public solicitation, e-mail the RFP prepared for public release to the CPO contact assigned to the procuring agency and to the Comptroller so that CPO staff can post the digital document(s) on the Internet as appropriate. The documents presented for publication must consist of one or more (clearly and logically separated component) digital files in PDF and DOC format. If previously approved, the cost proposal attachment may be presented for publication in XLS, spreadsheet format.

ALWAYS confirm that each document is properly posted for public review on the CPO's website. If, for any reason, a RFP is not properly published to the Internet, it may be necessary for the State to revise the approved RFP schedule of events to add additional time before the Q&A and Respondent deadlines.



STATE OF TENNESSEE
STATE AGENCY NAME

REQUEST FOR PROPOSALS
FOR
BRIEF GOODS OR SERVICES CAPTION

RFP # NUMBER

RFP CONTENTS

SECTIONS:

1. INTRODUCTION
2. RFP SCHEDULE OF EVENTS
3. RESPONSE REQUIREMENTS
4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS
5. EVALUATION & CONTRACT AWARD

ATTACHMENTS:

- 6.1. Response Statement of Certifications & Assurances
- 6.2. Technical Response & Evaluation Guide
- 6.3. Cost Proposal & Scoring Guide
- 6.4. Reference Questionnaire
- 6.5. Score Summary Matrix
- 6.6. *Pro Forma* Contract

1. INTRODUCTION

The State of Tennessee, **STATE AGENCY NAME**, hereinafter referred to as "the State," issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State's process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

1.1. Statement of Procurement Purpose

BRIEF, HIGH-LEVEL EXPLANATION OF GOODS OR SERVICES SOUGHT OR A SUMMARY OF THE PROBLEM TO BE ADDRESSED. INCLUDE FURTHER INFORMATION ABOUT INITIATIVE, SUMMARY BACKGROUND INFORMATION, ETC. AS NEEDED. DO NOT ASSUME THAT DETAILED SPECIFICATIONS (WHICH SHOULD BE SET OUT IN THE PRO FORMA CONTRACT SCOPE), WILL BE APPROVED FOR THIS SECTION. INCLUDE SUMMARY BACKGROUND INFORMATION ONLY AS NEEDED.

- 1.1.2. **ONLY IF APPLICABLE AND IF THE MAXIMUM LIABILITY IS NOT INCLUDED IN THE PRO FORMA CONTRACT, INCLUDE INFORMATION REGARDING THE TOTAL ESTIMATED PURCHASE BY AGENCIES OF STATE GOVERNMENT FOR THE CURRENT CONTRACT PERIOD, AND FOR THE CONTRACT PERIOD OF THE CONTRACT AWARDED PURSUANT TO THIS RFP. (SEE TENN. CODE ANN. § 12-3-305).**

1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma Contract* details the State's requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4. RFP Communications

- 1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

RFP # NUMBER

1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

- 1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

NAME
STATE AGENCY NAME
STREET ADDRESS
TELEPHONE NUMBER
E-MAIL ADDRESS
OTHER APPROPRIATE INFORMATION IF ANY

- 1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFP (visit <http://www.tn.gov/generalservices/article/godbe-general-contacts> for contact information); and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

NAME
STATE AGENCY NAME
STREET ADDRESS
TELEPHONE NUMBER
E-MAIL ADDRESS
OTHER APPROPRIATE INFORMATION IF ANY

- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section **REFERENCE**).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>.

- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP 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.

1.7. **Pre-Response Conference**

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

ADDRESS/LOCATION
OTHER APPROPRIATE INFORMATION IF ANY

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section REFERENCE and on the date detailed in the RFP Section 2, Schedule of Events.

1.8. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate);
- a contact person's name and title; and
- the contact person's mailing address, telephone number, facsimile number, and e-mail address.

A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.

1.9. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		DATE
2. Disability Accommodation Request Deadline	2:00 p.m.	≥ 3 BUSINESS DAYS LATER
3. Pre-response Conference	TIME	≥ 1 BUSINESS DAY LATER
4. Notice of Intent to Respond Deadline	2:00 p.m.	≥ 1 BUSINESS DAY LATER
5. Written "Questions & Comments" Deadline	2:00 p.m.	≥ 3 BUSINESS DAYS LATER
6. State Response to Written "Questions & Comments"		≥ 3 BUSINESS DAYS LATER
7. Response Deadline	2:00 p.m.	≥ 5 BUSINESS DAYS LATER
8. State Completion of Technical Response Evaluations		≥ 3 BUSINESS DAYS LATER
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	1 BUSINESS DAY LATER
10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	1 – 3 BUSINESS DAYS LATER
11. End of Open File Period		7 CALENDAR DAYS LATER
12. State sends contract to Contractor for signature		1 BUSINESS DAY LATER
13. Contractor Signature Deadline	2:00 p.m.	1 – 5 BUSINESS DAYS LATER

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section **REFERENCE**).

3. RESPONSE REQUIREMENTS

3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
 - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP, as may be amended.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.

- 3.2.2.1. One (1) original Technical Response paper document labeled:

“RFP # NUMBER TECHNICAL RESPONSE ORIGINAL”

and **WRITTEN NUMBER (NUMBER) digital** copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # NUMBER TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.

- 3.2.2.2. One (1) original Cost Proposal paper document labeled:

“RFP # NUMBER COST PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “PDF/XLS” format properly recorded on separate, blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # NUMBER COST PROPOSAL COPY”

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.

- 3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

- 3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

“DO NOT OPEN... RFP # NUMBER TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN... RFP # NUMBER COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP # NUMBER SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

SOLICITATION COORDINATOR NAME
STATE AGENCY NAME
STREET ADDRESS
OTHER APPROPRIATE INFORMATION IF ANY

3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:

3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.

3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section REFERENCE). A response must address the final RFP (including its attachments) as amended.

4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.6. **Insurance**

The State will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the Contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.
- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma Contract*, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

4.11. **Contract Amendment**

After Contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this RFP, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	NUMBER
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	NUMBER
Cost Proposal (refer to RFP Attachment 6.3.)	NUMBER ≥ 30% OF TOTAL POINTS

5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

- 5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.
- 5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A—Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:
- the response adequately meets RFP requirements for further evaluation;
 - the State will request clarifications or corrections for consideration prior to further evaluation; or,
 - the State will determine the response to be non-responsive to the RFP and reject it.
- 5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP,

and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.

5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.

5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.

5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

5.2.3. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

5.3. Contract Award Process

5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.

5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.

5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.

5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.

5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.

- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

RFP # NUMBER STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of the RFP Attachment 6.6., *Pro Forma* Contract for the total Contract Term.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the Contract.
5. The Respondent will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <http://www.tn.gov/generalservices/article/Public-Information-library>.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT

SIGNATURE:

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i>).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).	
	A.1.	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	INSERT APPROPRIATE MANDATORY REQUIREMENT OPTIONS AS NEEDED. (FOLLOWING A.2., YOU MUST INCLUDE AT LEAST ONE OPTION TO DETERMINE FINANCIAL RESPONSIBILITY).	
	A.#.	IF NEEDED, INSERT ADDITIONAL MANDATORY REQUIREMENT OPTIONS. IF MORE THAN ONE ADDITIONAL OPTION IS NEEDED, CREATE A NEW, ADDITIONAL ROW BELOW AND ADD THE OPTION LANGUAGE.	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	B.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	B.8.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.9.	<p>Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.</p>
	B.10.	<p>Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFP.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the</p>

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: <ul style="list-style-type: none"> (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u> (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: <ul style="list-style-type: none"> (a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information: <ul style="list-style-type: none"> (i) contract description; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: <ul style="list-style-type: none"> (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors. <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract,</p>

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. ▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.
	B.17.	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u> ▪ three (3) completed projects. <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</p> <p>(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <ol style="list-style-type: none"> (i) complete the reference questionnaire; (ii) sign and date the completed reference questionnaire; (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided; (iv) sign his or her name in ink across the sealed portion of the envelope; and (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>references in time to include them within the sealed Technical Response).</p> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. ▪ The State is under <u>no</u> obligation to clarify any reference information.
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none"> (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency; (b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and (d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.
	B.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES AS NECESSARY
		<p>SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = RFP § 5.1. NUMBER)</p>
State Use – Evaluator Identification:		

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		NUMBER	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State's project schedule.		NUMBER	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule.		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	

RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>		
$\frac{\text{Total Raw Weighted Score}}{\text{Maximum Possible Raw Weighted Score}}$ <i>(i.e., 5 x the sum of item weights above)</i>		X RFP § 5.1. NUMBER <i>(maximum possible score)</i>	= SCORE:		
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

ADDITIONAL REQUIREMENTS FOR COMPLETING PROPOSED COST (I.E., MINIMUM AMOUNT, "BLANK" CELLS, ETC.)

NOTICE: The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:			
PRINTED NAME & TITLE:			
DATE:			
RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
DESCRIPTION	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	

RFP ATTACHMENT 6.3. (continued)

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
EVALUATION COST AMOUNT (sum of evaluation costs above): The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
lowest evaluation cost amount from <u>all</u> proposals <hr/> evaluation cost amount being evaluated			x RFP § 5.1. NUMBER (maximum section score) = SCORE:
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

REFERENCE QUESTIONNAIRE

The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

RFP # NUMBER REFERENCE QUESTIONNAIRE**REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) **What goods or services does/did the reference subject provide to your company or organization?**

(4) **What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?**

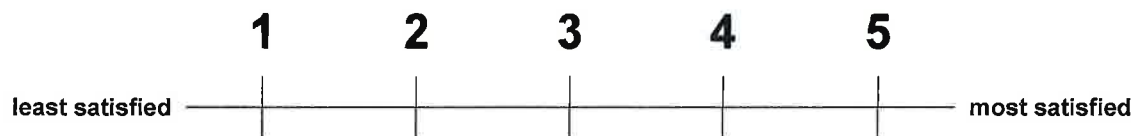
Please respond by circling the appropriate number on the scale below.

	1	2	3	4	5	
least satisfied						most satisfied

If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?
- (8) In what areas of goods or service delivery does/did the reference subject excel?
- (9) In what areas of goods or service delivery does/did the reference subject fall short?
- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

Please respond by circling the appropriate number on the scale below.

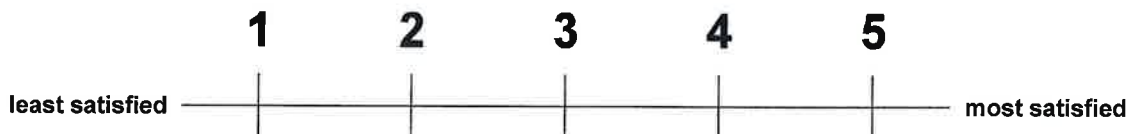


What, if any, comments do you have regarding the score selected above?

RFP # NUMBER REFERENCE QUESTIONNAIRE — PAGE 3

(11) Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

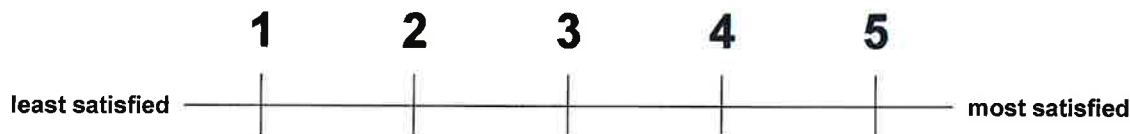
Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

(12) Would you contract again with the reference subject for the same or similar goods or services?

Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

REFERENCE SIGNATURE:
(by the individual completing this request for reference information)

(must be the same as the signature across the envelope seal)

DATE:

SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: § 5.1. NUMBER)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: NUMBER)						

Solicitation Coordinator Signature, Printed Name & Date:

RFP # NUMBER PRO FORMA CONTRACT

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**PRO FORMA CONTRACT
DRAFTED IN COMPLIANCE WITH CURRENT APPLICABLE MODEL**

RFP INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional RFP Instructions, Considerations, and Options. Replace or modify the Standard RFP Template by including the following content as appropriate. Content included as a paragraph with a line before it is intended to provide additional instructional guidance. Content included with a box around it is intended to be inserted into the standard RFP Template.

1.1. **Statement of Purpose**

This section should be used to highlight the purpose of the procurement and not to detail specific contract requirements. Such requirements should be enumerated in RFP Attachment 6.6., *Pro Forma Contract, Scope of Services*. All procurement specifications and scopes of work should be worded to permit free and open competition to the maximum extent reasonably practicable under the circumstances.

1.3. **Nondiscrimination**

Option: Exception for religious organizations.

Replace the standard Nondiscrimination language with the following for religious organizations.

1.3. **Nondiscrimination**

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the basis of any classification protected by Federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4.1. **RFP Communications**

Assign a RFP number consisting of:

- the 5-digit, procuring agency business unit code
- a unique, 5-digit, agency-assigned number such that each RFP number will be different

Example: **RFP # 31707-12345**

1.4.9. **Factual Data**

Option: Additional Data Disclaimer.

Add the following as a second paragraph of this section as appropriate:

All statistical or fiscal data or information provided by the State in conjunction with this RFP, whether by way of exhibits, amendments or modifications to this RFP, are provided by the State "as is." The State expressly disclaims any warranty as to the accuracy or the adequacy of any statistical or fiscal data that it provides to Respondents. A Respondent's reliance upon the accuracy or adequacy of such data shall not be the basis of relief from contract performance or recovery of actual, consequential or punitive damages from the State.

1.7. **Pre-response Conference**

Option: No Pre-response Conference.

Delete the section (and re-number subsequent sections accordingly) as appropriate.

Option: MANDATORY Pre-response Conference.

The use of mandatory Pre-response Conferences can limit competition and therefore should only be used under exceptional circumstances, and requires an approved Rule Exception Request. In the event a mandatory Pre-response Conference is needed, the first paragraph of this section should be revised as follows:

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is **MANDATORY**. A representative for the Respondent MUST identify themselves either telephonically or via a sign-in sheet if the Respondent attends in person.

Also, if the Pre-response Conference is mandatory add the following row to the RFP Attachment 6.2., Section A table:

A.#.	Respondent's representative attended the mandatory Pre-response Conference.	
------	---	--

Option: Performance Bond Requirement.

Procurement professionals should consider the advantages and disadvantages of requiring performance bonds because these bonds may not be appropriate for all types of procurements. Procurement professionals should include performance bond requirements if necessary to mitigate risk when procuring equipment, technology, or services. Performance bonds are a three-party agreement between a surety company, a contractor, and the State. The bond provides a guarantee that the contractor will comply with the terms and conditions of the contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. Although performance bonds may be beneficial for risky projects (e.g., projects requiring extensive software customization, system integration, etc.), these bonds can limit competition by excluding smaller firms (e.g., small, minority, women owned, service disabled veteran owned businesses). Smaller firms often have to pay substantially more to get a surety company to underwrite the bond. In deciding whether to require performance bonds, procurement professionals should balance the need to mitigate performance risk against adverse effects of bond requirements on small businesses, competition or the prices the State will pay for goods and services, as well as any other considerations.

If a Performance Bond requirement is proposed:

- determine the performance bond amount by balancing the need to mitigate the risks involved in the given procurement and any adverse effects of bonding on small businesses, competition, or pricing;
- prepare a bond in form and substance acceptable to the CPO and attach it to the RFP, Attachment 6.6., *Pro Forma* Contract, as a properly referenced attachment;
- provide documentation of legal counsel determination to the CPO indicating that the proposed Performance Bond form is enforceable by the state;
- provide written justification to the CPO that the bond requirement is warranted due to the unique circumstances of the procurement; AND
- add the model Performance Bond section below following the Notice of Intent to Respond section of the RFP (and re-number subsequent section(s) appropriately).

1.#. Performance Bond

The State shall require a performance bond upon approval of a contract pursuant to this RFP. The amount of the performance bond shall be a sum equal to **WRITTEN DOLLAR AMOUNT (\$NUMBER)**, and said amount shall not be reduced at any time during the period of the contract.

The successful Respondent must obtain the required performance bond in form and substance acceptable to the State (refer to RFP Attachment 6.6., *Pro Forma* Contract, Attachment **REFERENCE**, Model Performance Bond) and provide it to the State no later than the performance bond deadline detailed in the RFP Section 2, Schedule of Events.

After contract award, the successful Respondent must meet this performance bond requirement by providing the State either:

- a. a performance bond that covers the entire Contract period including all options to extend the

Contract, or

- b. a performance bond for the first, twelve (12) calendar months of the Contract in the amount detailed above, and, thereafter, a new or re-issued performance bond in the amount detailed above covering each subsequent twelve (12) calendar month period of the Contract. (In which case, the Contractor must provide the new (or re-issued) performance bonds to the State no later than thirty (30) days preceding each subsequent period of the Contract to be covered by the new (or re-issued) bond.)

The successful Respondent must make all necessary arrangements for the performance bond prior to the Contract start date and prior to any subsequent performance bond deadlines in the case of an annual performance bond. The Respondent is responsible for securing the services of any fidelity or guaranty underwriter.

The performance bond requirement set forth above is a material condition for the award of a contract or any renewal or extension of any contract that is awarded. The Respondent's/Contractor's failure to provide to the State a performance bond as required by RFP Section 2, Schedule of Events, shall entitle the State to exercise any and all rights it has in law or in equity. During the term of the Contract, the Respondent's/Contractor's failure to periodically provide to the State a new or re-issued performance bond, no later than thirty (30) days preceding each period of the Contract to be covered by the new or re-issued performance bond, shall entitle the State to exercise any and all rights it has in law or in equity.

2. RFP SCHEDULE OF EVENTS

2.1. RFP Schedule of Events (table)

The Request for Proposals process from issuance of the RFP to contract award will be in most cases at least thirty (30) business days.

Revise the "time zone" as appropriate.

The standard RFP Schedule of Events is copied below for easy reference:

EVENT	TIME (central time zone)	DATE
1. RFP Issued		
2. Disability Accommodation Request Deadline	2:00 p.m.	
3. Pre-response Conference	TIME	
4. Notice of Intent to Respond Deadline	2:00 p.m.	
5. Written "Questions & Comments" Deadline	2:00 p.m.	
6. State Response to Written "Questions & Comments"		
7. Response Deadline	2:00 p.m.	
8. State Completion of Technical Response Evaluations		
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	
10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	

11. End of Open File Period		7 CALENDAR DAYS LATER
12. State sends contract to Contractor for signature		
13. Contractor Contract Signature Deadline	2:00 p.m.	

Option: NO Pre-response Conference Event.

Delete the Pre-response Conference Event 3 from the schedule and re-number subsequent events as appropriate.

Option: Oral Presentation Event.

Complete and insert the following rows, in order and immediately after the Response Deadline event. Re-number subsequent events as appropriate.

#. State Schedules Respondent Oral Presentation		
#. Respondent Oral Presentation	8 a.m. - 4:30 p.m.	

Option: Negotiations.

For CPO USE ONLY. Add the following after the Cost Proposal Deadline event, if applicable.

#. Negotiations (Optional)	4:30 p.m.	
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Option: Performance Bond Deadline.

Complete and insert the following row immediately after the Contractor Contract Signature Deadline event as appropriate.

#. Performance Bond Deadline	4:30 p.m.	
------------------------------	-----------	--

3. RESPONSE REQUIREMENTS**3.1. Response Form****Option: Technical Response Page Limitation**

Replace section 3.1.1.2. with the following (revise specific documents that will be exempted from page limitation count as appropriate):

A Technical Response should be economically prepared, with emphasis on completeness and clarity, and should **NOT** exceed ___ pages in length (maps, graphs, charts, as noted and included as an appendix will not count against this page limit). A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and all text must be at least a 12 point font. All response pages must be numbered.

Also, if page limitations will be a mandatory requirement, add the following row to the RFP Attachment 6.2., Section A table:

A.#.	Respondent's Technical Response must not exceed _____ pages in length and all text must be at least a 12 point font (maps, graphs, and charts included as an appendix will not count against this page limit)	
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3.2. Response Delivery

Request respondents to provide to the State a sufficient number of Technical Response copy discs or USB flash drives to allow one copy for each Proposal Evaluation Team member.

Option: Additional Delivery Instructions.

Revise subsections, if necessary, to provide for additional instructions for labeling and submitting the Technical Response and Cost Proposal.

3.3. Response and Respondent Prohibitions**Option: No Extraneous Terms and Conditions in Response**

If the RFP involves information technology goods or services, insert the following as 3.3.2. and renumber the subsequent subsections **only after** consulting with the Central Procurement Office's Legal Team and obtaining the Central Procurement Office's approval.

A Respondent shall not include in its response, or after contract award, any end-user license agreement, manufacturer's terms and conditions, service guide, clickwrap agreement, shrinkwrap agreement, online terms and conditions, or other terms and conditions that supplement, modify, or contradict the terms set forth in the *pro forma* contract.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS**4.8. Disclosure of Response Contents****Option: Additional Disclosure Information.**

Add the following to the end of sub-section 4.8.3., if it is requested by the procuring agency and approved by the Attorney General's Office. The Attorney General's Office's approval shall be submitted with the RFP review request.

The State agrees to protect, to the fullest extent permitted by state law, the confidentiality of information expressly identified by the Respondent as confidential and proprietary, including information that would allow a person to obtain unauthorized access to confidential information or to electronic information processing systems owned by or licensed to the State.

4.9. Contract Approval and Contract Payments**Option: Awarded Respondent shall accept the State's Purchasing Card as a form of payment**

Add the following to the end of subsection 4.9.3. only after performing market research and determining that requiring vendors to accept payments via purchasing card and providing level III data reporting is generally accepted in the marketplace.

The Respondent awarded the Contract resulting from this RFP shall accept the State's Purchasing Card ("P-Card") as a form of payment at no cost to the State and provide level III data reporting information.

5. EVALUATION & CONTRACT AWARD**5.1. Evaluation Categories & Maximum Points**

The total, maximum possible points should be expressed as a numerical score, e.g., "100" (or "1,000"), so that the relative percentage of importance or emphasis of each category is readily apparent. The weight of each category should correspond to the importance to the State of each criterion. The evaluation points assigned to the Cost Proposal may NOT be less than 30% of the total points.

Option: Oral Presentation Points – Example 1.

Replace the RFP Section 5.1. table with the following if an Oral Presentation requirement is proposed. Only include this section if the Oral Presentation will be evaluated as a separate evaluation category.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	NUMBER
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	NUMBER
Oral Presentation (refer to RFP Attachment 6.2., Section D)	NUMBER ≤ 10% OF TOTAL POINTS
Cost Proposal (refer to RFP Attachment 6.3.)	NUMBER ≥ 30% OF TOTAL POINTS

5.2. Evaluation Process

Option: Multiple Contract Awards

If the State intends to use this RFP to award multiple contracts (e.g. by region) the Evaluation Process must clearly detail how the responses will be evaluated.

Option: Oral Presentation Points – Example 1.

The procuring state agency must maintain an accurate record of each Respondent's oral presentation session such that all pertinent dialogue between Proposal Evaluation Team members, technical advisers, and Respondents shall be reduced to writing or otherwise memorialized. Procurement Professionals should consider using a court reporter, video recording, or audio recording to memorialize the oral presentation.

Insert the following as sections 5.2.1.5., *et seq.* (and renumber current section 5.2.1.5. accordingly) if an Oral Presentation is required.

5.2.1.5. The Solicitation Coordinator will invite each apparently responsive and responsible Respondent to make an oral presentation.

5.2.1.5.1. The oral presentations are mandatory. The Solicitation Coordinator will schedule Respondent presentations during the period indicated by the RFP Section 2, Schedule of Events. The Solicitation Coordinator will make every effort to accommodate each Respondent's schedules. When the Respondent presentation schedule has been determined, the Solicitation Coordinator will contact Respondents with the relevant information as indicated by RFP Section 2, Schedule of Events.

5.2.1.5.2. Respondent presentations are only open to the invited Respondent, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants who are selected by the State to provide assistance to the Proposal Evaluation Team.

5.2.1.5.3. Oral presentations provide an opportunity for Respondents to explain and clarify their responses. Respondents must not materially alter their responses and presentations will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Response & Evaluation Guide. Respondent pricing shall not be discussed during oral presentations.

5.2.1.5.4. The State will maintain an accurate record of each Respondent's oral presentation session. The record of the Respondent's oral presentation shall be available for review when the State opens the procurement files for public inspection.

5.2.1.5.5. Proposal Evaluation Team members will independently evaluate each oral presentation in accordance with the RFP Attachment 6.2., Technical

Response & Evaluation Guide, Section D.

- 5.2.1.5.6. The Solicitation Coordinator will calculate and document the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, Section D, and record that number as the score for Respondent's Technical Response section.

Option: Oral Presentation Threshold Requirement.

A threshold requirement should not be arbitrary and may require legal counsel recommendation.

The optional language for RFP section 5.2.1.5. (above) may be revised to establish a minimum standard or threshold requirement that must be met before an invitation to make an Oral Presentation is extended by the State. The minimum standard or threshold requirement must be detailed in the RFP. See possible examples below:

Option: Ranking

The Solicitation Coordinator will invite the top **NUMBER (#)** ranked Respondents to make an oral presentation. The ranking will be determined after the Technical Response score is totaled and ranked (e.g., 1 – the best evaluated ranking, etc.).

Option: Percentile

The Solicitation Coordinator will invite Respondents whose Technical Response scores have attained a combined score of **NUMBER (#)**. This minimum score threshold represents a score of **NUMBER (#)%** of the maximum possible Technical Response score.

Option: Minimum Score

The Solicitation Coordinator will invite Respondents to make an oral presentation who have attained a minimum score of **NUMBER (#)**.

Option: Oral Presentation No Points – Example 2.

The procuring state agency must maintain an accurate record of each Respondent's oral presentation session such that all pertinent dialogue between Proposal Evaluation Team members, technical advisers, and Respondents shall be reduced to writing or otherwise memorialized. Procurement Professionals should consider using a court reporter, video recording, or audio recording to memorialize the oral presentation.

Insert the following optional language as sections 5.2.1.5., *et seq.* (and renumber current section 5.2.1.5. accordingly) if an Oral Presentation is proposed.

5.2.1.5. The Solicitation Coordinator will invite each Respondent, who is apparently responsive and responsible, to make an oral presentation.

5.2.1.5.1. The Solicitation Coordinator will schedule Respondent presentations during the period indicated by the RFP Section 2, Schedule of Events. The Solicitation Coordinator will make every effort to accommodate each Respondent's schedules. When the Respondent presentation schedule has been determined, the Solicitation Coordinator will contact Respondents with the relevant information as indicated by RFP Section 2, Schedule of Events.

5.2.1.5.2. Respondent presentations are only open to the invited Respondent, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants who are selected by the State to provide assistance to the Proposal Evaluation Team.

- 5.2.1.5.3. Oral presentations provide an opportunity for Respondents to explain and clarify their responses. Respondents must not materially alter their responses and presentations will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Response & Evaluation Guide. Respondent pricing shall not be discussed during oral presentations. Evaluators may adjust Respondents' Technical Response scores based on Oral Presentations.
- 5.2.1.5.4. The State will maintain an accurate record of each Respondent's oral presentation session. The record of the Respondent's oral presentation shall be available for review when the State opens the procurement files for public inspection.

Option: Clarifications and Negotiations.

For CPO USE ONLY. Note: Negotiations shall not be utilized by a state agency unless such procurement is performed by the central procurement office. (See Tenn. Code Ann. § 4-56-108(a)(8).

Add the following section as 5.2.3. and renumber subsequent sections accordingly.

- 5.2.3. **Clarifications and Negotiations:** The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
- 5.2.3.1. **Clarifications:** The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.
- 5.2.3.2. **Negotiations:** The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
- 5.2.3.3. **Cost Negotiations:** All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.
- 5.2.3.4. If the State determines that it is unable to successfully negotiate a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.

Option: Multiple Contract Awards Possible

Revise the following subsections to describe how contracts will be awarded if more than one award is contemplated. This should also be mentioned in RFP section 1.1., "Statement of Procurement Purpose."

5.3. Contract Award Process

- 5.3.1. The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to the contract awards.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Responses. To effect a contract award to a Respondent other than the ones receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated responses and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondents or any other Respondent.

- 5.3.4. The Respondents identified as offering the apparent best-evaluated responses must sign a contract drawn by the State pursuant to this RFP. The contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondents must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiations prior to contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall **NOT** materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated responses.

6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION A

Proof of Financial Ability to Perform

One or more of the following optional provisions for a respondent to show its financial ability to perform must be added to RFP Attachment 6.2., Section A table if appropriate. Solicitation coordinators should consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or services being procured. In the interests of flexibility, one or more of the following optional provisions must be utilized.

Option: Bank Reference

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a bank reference as evidence of Respondent's financial responsibility.

	A.#.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
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Option: Credit References

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of vendor credit references as evidence of Respondent’s financial responsibility.

	A.#.	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.
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Option: Credit Bureau Report

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit bureau report as evidence of Respondent’s financial responsibility.

	A.#.	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)
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Option: Credit Rating

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit rating as evidence of Respondent’s financial responsibility.

	A.#.	Provide a current credit rating from Moody’s, Standard & Poor’s, A.M. Best or Fitch Ratings, verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent.
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Option: Credit Rating – Credit Bureau Report Option.

Some companies may not have an official credit rating from one of the four major credit rating services. Therefore, requiring credit ratings (as detailed above) without an alternative to the requirement could conceptually prevent certain companies from responding to the RFP.

The procuring agency should consider the possible impact of the requirement on competition versus the State’s need to reasonably determine the financial responsibility of respondents and decide whether it is appropriate to include an alternative to the requirement.

Insert the following paragraph in the optional credit rating requirement text (above) if appropriate.

OR, in lieu of the aforementioned credit rating, provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.)

Option: Certificate of Insurance.

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) ONLY IF a Certificate of Insurance is considered necessary evidence of contractor financial responsibility. (Specifying insurance requirements in the *pro forma* contract does not necessitate adding this optional response requirement.)

Add, delete, or revise subsections detailing insurance coverage requirements as appropriate. (If this response requirement item is added to the RFP, the appropriate Insurance provision must be detailed in the *pro forma* contract. The insurance coverage requirements specified in both the RFP and the *pro forma* contract must be the same.)

	A.#.	Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following: (a) Name of the Insurance Company (b) Respondent’s Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverages: (i) Workers’ Compensation/ Employers’ Liability with a limit not less than the relevant statutory amount or WRITTEN AMOUNT
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		<p>Dollars (\$NUMBER AMOUNT) per occurrence for employers' liability;</p> <p>(ii) Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence and WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) aggregate;</p> <p>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence; and</p> <p>(iv) Professional Malpractice Liability with a limit of not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per claim.</p> <p>(e) The following information applicable to each type of insurance coverage:</p> <p>(i) Coverage Description,</p> <p>(ii) Exceptions and Exclusions,</p> <p>(iii) Policy Effective Date,</p> <p>(iv) Policy Expiration Date, and</p> <p>(v) Limit(s) of Liability.</p>	
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Option: Audited Financial Statements.

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) ONLY IF the anticipated contract amount is \geq \$1,000,000.00 AND extraordinary effort to assure contractor financial responsibility is appropriate. Note: Audited Financial Statements may also be included as appropriate.

	A.#.	<p>Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements <u>must</u>:</p> <p>(1) reflect an audit period for the most recent available fiscal year;</p> <p>(2) be prepared with all monetary amounts detailed in United States currency;</p> <p>(3) be prepared under United States Generally Accepted Accounting Principles (US GAAP);</p> <p>(4) include the auditor's opinion letter; financial statements; and the notes to the financial statements; and</p> <p>(5) be deemed, in the sole discretion of a C.P.A. employed by the State and charged with the financial document review of the Respondent, to reflect sufficient financial stability to undertake the subject contract with the State if awarded pursuant to this RFP.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will <u>not</u> be accepted. ▪ All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof that the person or entity who renders an opinion regarding the Respondent's financial status is licensed, including the license number and state in which the person or entity is licensed. 	
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Option: Audited Financial Statements – Line of Credit Option.

Privately held entities may not respond to a RFP if there is a risk that their audited financial statements will be available for public review. Therefore, requiring audited financial statements (as detailed above) without an alternative to this requirement could limit competition or involvement by privately held entities.

The procuring agency should weigh the impact of the financial statement requirement on competition versus the state's need to reasonably determine the financial stability/responsibility of Respondents and whether a suitable alternative to a financial statement is available.

Insert the following paragraph before the "NOTES" in the optional audited financial statements requirement text (above) if appropriate.

OR, in lieu of the aforementioned independent audited financial statements, provide a financial institution's letter of commitment for a general Line of Credit in the amount of **WRITTEN AMOUNT ≥ ONE MILLION DOLLARS (\$NUMBER AMOUNT)**, U.S. currency, available to the Respondent. Said letter must specify the Respondent's name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least **PERIOD ≥ 6 MONTHS**.

Contingent Requirement: Performance Bond Confirmation.

Add the following row to the RFP Attachment 6.2., Section A table **ONLY IF** a Performance Bond is proposed.

	A.#.	Provide a statement confirming that, if awarded a contract pursuant to this RFP, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFP. The statement must be signed by an individual with legal authority to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it.	
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Option: Additional Mandatory Requirements.

Typically, each mandatory requirement item must be drafted such that it is capable of being objectively determined on a "yes/no" basis. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Qualitative evaluation should not be required to determine whether the response was reasonable and adequate to satisfy each mandatory requirement.

Procuring agency staff may be asked to provide evidence that a proposed mandatory requirement is rationally related to the procurement goals.

To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.

Add mandatory requirement items to the RFP Attachment 6.2., Section A table (after the template items) as appropriate.

6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION B
General Qualifications & Experience

The entire set of General Qualification & Experience items detailed in the template for this section MUST be evaluated together as indicated.

RFP Attachment 6.2., Section B and the methodology for evaluating responses may NOT be revised except to add new evaluation items.

B.17. References

Option: Revised Reference Requirements.

Do not assume automatic approval of any revision of the template text.

Revise the number of required references as appropriate. Revise the template text, as appropriate, to detail an alternate process for obtaining and evaluating references. Any such revision must be exactly detailed and clearly uniform in application with all Respondents.

6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION C

Technical Qualifications, Experience & Approach

The total, maximum possible points should be expressed as a numerical score, e.g., “100” (or “1,000”), so that the relative percentage of importance or emphasis of each category is readily apparent. The weight of each category should correspond to the importance to the State of each criterion.

Do NOT assume automatic approval of proposed Evaluation Factors. Procuring agency staff may be required to justify and explain in detail the basis for each proposed Evaluation Factor.

Assign Evaluation Factors such that the Point Scale Score for each item will be weighted to reflect the relative importance of the item to the other evaluation items within the section.

If all evaluation items in the section are to be considered (weighted) equally, specify “1” as the Evaluation Factor for each item.

Option: C.1. Delete or revise this requirement as appropriate.

Option: C.2. Delete or revise this requirement as appropriate.

Option: C.3. Delete or revise this requirement as appropriate.

Option: Additional Technical Qualifications, Experience & Approach Items. Add evaluation items to the RFP Attachment 6.2., Section C table so that the state has the best possible information upon which to make a contractor selection.

Option: 6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION D

The total, maximum possible points should be expressed as a numerical score, e.g., “100” (or “1,000”), so that the relative percentage of importance or emphasis of each category is readily apparent. The weight of each category should correspond to the importance to the State of each criterion.

Do NOT assume automatic approval of proposed Evaluation Factors. Procuring agency staff may be required to justify and explain in detail the basis for each proposed Evaluation Factor.

Add RFP Attachment 6.2., Section D (next page) if oral presentation points are proposed.

Assign Evaluation Factors such that the Point Scale Score for each item will be weighted to reflect the relative importance of the item to the other evaluation items within the section. If all evaluation items in the section are to be considered (weighted) equally, specify “1” as the Evaluation Factor for every item.

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION D: ORAL PRESENTATION. The Respondent must address ALL Oral Presentation Items (below).

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the presentation response to each item. Each evaluator will use the following whole-number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:			
Oral Presentation Items	Item Score	Evaluation Factor	Raw Weighted Score
D.1. ORAL PRESENTATION TOPIC OR QUESTION TO BE ADDRESSED		NUMBER	
D.2. REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES AND WEIGHTS AS NECESSARY		NUMBER	
Total Raw Weighted Score <i>(sum of Raw Weighted Scores above):</i> The Solicitation Coordinator will use this sum and the formula below to calculate the score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
total raw weighted score		X RFP § 5.1. NUMBER	= SCORE:
maximum possible raw weighted score <i>(i.e., 5 x the sum of item weights above)</i>		<i>(maximum section score)</i>	
<i>State Use – Evaluator Identification:</i>			
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

6.3. COST PROPOSAL & SCORING GUIDE ATTACHMENT

Each cost item must clearly specify the associated, applicable compensable units of goods or services. While the cost item description should stipulate the applicable compensable units of goods or services, it should also be specified within each blank cost cell. Examples: \$ ___ / hour, or \$ ___ / each, etc.

The Cost Proposal format should not require calculations by Respondents.

The Cost Proposal & Scoring Guide (and the associated *pro forma* contract payment methodology) must be drafted such that NO Respondent proposes a total cost equal to zero. This is critical if the cost proposal evaluation formula is to mathematically result in rational numbers as cost proposal scores. (In some instances, it might be necessary to require a minimum proposed amount for one or more compensable units.)

Note: A RFP is not the correct solicitation choice if the procurement is for certain categories of professional services (e.g., attorneys, financial advisors, or engineers). Please refer to the RFQ Template and see Tenn. Code Ann. § 12-3-103 and 12-4-107 for more information. State Building Commission (SBC) approval may be required to approve the procurement of architectural or engineering services. Please contact STREAM for more information.

EVALUATION FACTORS — A factor associated with each cost item is used to foster reasonable, competitive pricing for all compensable units and to prevent Respondents from offering prices with the intent of gaming the evaluation model but not resulting in the best overall cost to the state. The use of Evaluation Factors should also result in a more appropriate consideration of each cost item in terms of its relative impact upon the total cost to the State under any contract awarded pursuant to the RFP. Typically, all Evaluation Factors must be based upon:

- historic data relating to the number of the associated compensable units previously bought by the state for a comparable period; OR
- the procuring state agency's reasoned projection of the actual number of each compensable unit that the state will buy during the entire contract period (including all renewals or extensions of the contract).

If one or more milestone or other lump sum type payment amounts are included in the mix of cost items, the logical Evaluation Factor for each milestone or lump sum cost item should typically be "1" since each payment amount would be remitted only one time.

Do NOT assume automatic approval of proposed Evaluation Factors. Procuring agency staff may be required to justify and explain in detail the basis for each proposed Evaluation Factor.

Option: Cost Proposal Format Default – ONE Payment Rate Per Cost Item (static or CPI-escalated).

Use the default Cost Proposal schedule if the Respondents must offer only one rate per compensable unit for the entire contract period (with or without rate escalation provisions are detailed in the *pro forma* contract).

Option: Cost Proposal Format – Unit or Temporal Rate Payments (proposed by period).

Use the following table if Respondents must offer rates for one or more compensable units for each of several specified periods of the contract.

Option: Cost Proposal Schedule

If it is beneficial to the State, the number of days that the Cost Proposal shall remain valid may be revised to a number not less than thirty (30) days.

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for providing goods or services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract, for the entire contract period. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

ADDITIONAL REQUIREMENTS FOR COMPLETING PROPOSED COST (I.E., MINIMUM AMOUNT, "BLANK" CELLS, ETC.)

NOTICE: The Evaluation Factor associated with each compensable unit is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract, Section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request any goods or services from the Contractor in any specific dollar amounts or to request any goods or services at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to this RFP. If the individual signing this Cost Proposal is not the *President* or *Chief Executive Officer*, the Respondent must attach evidence to the Cost Proposal showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:								
PRINTED NAME & TITLE:								
DATE:								
RESPONDENT LEGAL ENTITY NAME:								
Cost Item Description	Proposed Cost					State Use ONLY		
	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	Sum	Evaluation Factor	Evaluation Cost (sum x factor)
DESCRIPTION	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	

RESPONDENT LEGAL ENTITY NAME:								
Cost Item Description	Proposed Cost					State Use ONLY		
	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	Sum	Evaluation Factor	Evaluation Cost (sum x factor)
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	
TOTAL EVALUATION COST AMOUNT (sum of evaluation costs above):								
The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.								
$\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}}$						$\times \text{RFP § 5.1. NUMBER (maximum possible score)} = \text{SCORE:}$		
State Use – Solicitation Coordinator Signature, Printed Name & Date:								

Option: Cost Proposal Format – No Evaluation Factors Column

In those instances where the relative importance of ALL cost items is equal (for example, if contract payments will be only based on milestone/ lump sum type payments in which the sum of all of the cost items would equal the anticipated cost of the contract), all Evaluation Factors would equal "1." Towards that end, it is acceptable to draft the cost proposal format without the preamble notice relating to Evaluation Factors, without the Evaluation Factor column, or the Sum and Evaluation Factor columns.

Option: Cost Proposal & Scoring Guide.

Revise the Cost Proposal & Scoring Guide detailed in the template, as appropriate, to direct Respondents to complete a protected spreadsheet ("protected" so that Respondents may only insert proposed cost as required) provided by the State along with the RFP in lieu of completing the cost proposal table illustrated in the guide.

6.4. REFERENCE QUESTIONNAIRE ATTACHMENT**Option: Questionnaire Revision.**

Add, delete, or revise questionnaire items as appropriate to the subject procurement so that the State has the best possible information upon which to make a contractor selection.

6.5. SCORE SUMMARY MATRIX ATTACHMENT

Replace the RFP Attachment 6.5. table with the following replacement table ONLY IF points will be allocated for the Oral Presentation.

SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
ORAL PRESENTATION (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: § 5.1. NUMBER)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: NUMBER)						
<i>Solicitation Coordinator Signature, Printed Name & Date:</i>						

6.6. PRO FORMA CONTRACT ATTACHMENT

Draft the *pro forma* contract in accordance with the current FA Template.

Option: Disclaimer for Government Entity Contracts.

Add the following optional text to the attachment cover page if deemed appropriate.

If the contract is awarded to a governmental entity established pursuant to *Tennessee Code Annotated* and separate and apart from the State (e.g., a human resource agency, a developmental district, etc.), the standard terms and conditions of the contract shall be revised accordingly.

**CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2015-010, *STATEWIDE
PURCHASING CARD POLICY AND
PROCEDURES***

REQUEST: **Revise section 6.1. of Policy Number 2015-010, Statewide Purchasing Card Policy and Procedures as follows.**

6.1. Lost or Stolen Cards.

If a P-Card is lost, stolen, or the card information has been compromised, the Cardholder must immediately contact the Bank's customer service. Upon such notification, outstanding authorizations will be confirmed and the Bank will cancel the P-Card (further use of the P-Card will be blocked by the Bank). Neither the State nor the Cardholder will be responsible for fraudulent charges made to a promptly reported lost or stolen card.

At the time of the notification, the Bank may request the following information:

- Cardholder's name
- Account number
- Last four digits of SSN
- Circumstances surrounding the loss of the card
- Any purchase(s) made prior to the card being lost or stolen

The Cardholder must notify his or her State Agency P-Card Program Coordinator of the P-Card's loss or theft and make arrangements to receive a new P-Card. The Bank will then issue a new card with a new account number which will be delivered to the State Agency P-Card Program Coordinator.

The State Agency P-Card Program Coordinator must report any theft, forgery, or credit card fraud to the office of the Comptroller of the Treasury in accordance with Tenn. Code Ann. § 8-4-119 and to the Statewide P-Card Program Administration Team.

GU-USGS TEMPLATE

GU-USGS TEMPLATE

This template prescribes the format and content for a fee-for-service agreement with the U.S. Geological Survey (USGS) (assigned the agreement number prefix: GU).

Procurement professionals shall adhere to this template with revisions only as instructions permit. Changes to this template require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office*.



A G R E E M E N T

(fee-for-service agreement with the U.S. Geological Survey)

Begin Date	End Date	Agency Tracking #	Edison Record ID		
Contractor Legal Entity Name U.S. Geological Survey			Edison Supplier ID		
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input type="checkbox"/> Vendor		CFDA #			
Service Caption (one line only)					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - GU</i>	
				Speed Chart (optional) Account Code (optional)	

**AGREEMENT
BETWEEN THE STATE OF TENNESSEE,
STATE AGENCY NAME
AND
U.S. GEOLOGICAL SURVEY**

This Agreement, by and between the State of Tennessee, *State Agency Name*, hereinafter referred to as the "State" and U.S. Geological Survey, hereinafter referred to as the "USGS," is for the provision of *Short Investigation Description*, as further defined in the "SCOPE OF INVESTIGATIONS."

USGS Edison Registration ID # *Number*

A. SCOPE OF INVESTIGATIONS:

- A.1. The USGS shall provide all investigations and deliverables as required, described, and detailed by this Scope of Investigations and shall meet all delivery timelines specified in the Scope of Investigations section or elsewhere in this Agreement.
- A.#. *Specify the services, deliverables, technical specifications, & delivery requirements that the USGS must provide and meet (sufficient detail is required to ensure USGS accountability and definitive results).*

B. TERM OF AGREEMENT:

This Agreement shall be effective on *DATE* ("Effective Date"), and extend for a period of *number (#) months* after the Effective Date ("Term"). The State shall have no obligation for investigations or deliverables provided by USGS prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Agreement exceed *Written Dollar Amount (\$Number)*. The payment rate in Section C.3 shall constitute the entire compensation due the USGS for the investigations, any associated deliverables and all of the USGS's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the USGS. The USGS also agrees to jointly fund this project as indicated in the attached U.S. Department of the Interior, U.S. Geological Survey, Joint Funding Agreement incorporated as a part of this document as Attachment 1.
- C.2. Compensation Firm. The payment rate and the maximum liability of the State under this Agreement are firm for the duration of the Agreement and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The USGS shall be compensated based on the payment rate herein for investigation milestones authorized by the State in a total amount not to exceed the Agreement Maximum Liability established in Section C.1. USGS payment and invoice requirements as specified in Attachment 1 (USGS Standard JFA Form 9-1366) shall take precedence over the following clauses, in case of conflict.
- a. The USGS's compensation shall be contingent upon the satisfactory completion of milestones of the investigation defined in Section A.
 - b. The USGS shall be compensated for said investigation milestones based upon the following payment rates:

Investigation Milestone Description	Amount (per compensable increment)
Completion of Each 3-Month Investigation Period (including any associated deliverables)	\$ Number

- C.4. Travel Compensation. The USGS shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The USGS shall invoice the State upon the completion of each investigation milestone and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- a. The USGS shall submit invoices for each 3-month investigation period, with all necessary supporting documentation, to:
- State Agency Billing Address**
- b. The USGS agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice Number (assigned by the USGS);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Agreement Number (assigned by the State to this Agreement);
 - (5) Account Name: **Procuring State Agency & Division Name**;
 - (6) Account Number (uniquely assigned by the USGS to the above-referenced Account Name);
 - (7) USGS Name;
 - (8) USGS Tennessee Edison Registration ID Number Referenced in Preamble of this Agreement);
 - (9) USGS Contact for Invoice Questions (name, phone, and/or fax);
 - (10) USGS Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Description of the investigation milestone invoiced; and
 - ii. Applicable Payment Rate /Amount Due (as stipulated in Section C.3.) for the investigation milestone invoiced.
- c. The USGS understands and agrees that an invoice to the State under this Agreement shall:
- (1) include only charges for investigations described in Agreement Section A and in accordance with payment terms and conditions set forth in Agreement Section C;
 - (2) only be submitted for completed work and shall not include any charge for future work; and
 - (3) not include sales tax or shipping charges.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced, provided that the state questions a paid invoice within a period of six (6) months after payment of an invoice.
- C.7. Invoice Reductions. The USGS's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Agreement, not to constitute proper remuneration for compensable investigations or deliverables.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Agreement until it is signed by any federal officials in accordance with federal regulations and by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Agreement, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Agreement may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base Agreement and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the State exercise this provision, the USGS shall be entitled to compensation for all satisfactory and authorized investigations completed as of the termination date. Should the USGS exercise this provision, the State shall have no liability to the USGS except for those units of investigations which can be effectively used by the State. The final decision as to what these units of investigations are shall be mutually agreed upon by both parties.
- D.4. Termination for Cause. If the USGS fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the USGS violates any terms of this Agreement, the State shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed investigations. Notwithstanding the foregoing, the USGS shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Agreement by the USGS, however, the extent of possible damages is limited by the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*).
- D.5. Contracting. The USGS shall not assign this Agreement or enter into a contract or other agreement for any of the investigations or any associated deliverables performed under this Agreement without obtaining the prior written approval of the State. If such contracts are approved by the State, they shall contain, at a minimum, sections of this Agreement below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved contractors, the USGS shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The USGS agrees that no part of the total Agreement Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the USGS in connection with any work contemplated or performed relative to this Agreement.
- D.7. Nondiscrimination. The USGS hereby agrees and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the USGS on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State constitutional, or statutory law. The USGS, as a federal government entity, is bound by federal anti-discrimination laws and cannot discriminate on these prohibited bases.
- D.8. Records. The USGS shall maintain documentation for all charges under this Agreement. The books, records, and documents of the USGS, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of five (5) full years from the date of the final payment. Except as inconsistent with or contrary to applicable Federal law and regulation, USGS agrees to jointly cooperate with the State, the Comptroller of the Treasury, or

their duly appointed representatives, to account in a reasonable manner for any work performed and costs incurred under this agreement during normal working hours and without additional cost to USGS. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.9. Prevailing Wage Rates. All Agreements for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in Tenn, Code Ann., § 12-4-401 *et seq.*, except for those Federal employees whose pay level may be found on the "General Schedule Pay" published by the U.S. Office of Personnel Management.
- D.10. Evaluation. The USGS's activities conducted and records maintained pursuant to this Agreement shall be subject to periodic reviews and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The USGS shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Entities. The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual investigations. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The USGS, being a federal agency, shall be considered to be self insured for the purposes of public liability. The USGS is also subject to the Federal Torts Claims Act.
- D.14. State Liability. The State shall pay the USGS no more than as specifically provided in this Agreement and as it may be amended.
- D.15. Force Majeure. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The parties shall comply with all applicable state and federal laws and regulations in the performance of this Agreement.
- D.17. Governing Law. This Agreement shall be governed by and construed in accordance with appropriate federal laws and courts. The USGS agrees that it will be subject to the exclusive jurisdiction of the courts of the United States that are located within the State of Tennessee where appropriate in actions that may arise under this Agreement.
- D.18. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected

thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

- D.20. Headings. Section headings of this Agreement are for reference purposes only and shall not be construed as part of this Agreement.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Agreement, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Name & Title Of State Contact Person
 State Agency Name
 Address
 E-Mail Address
 Telephone # Number
 FAX # Number

The USGS:

Name & Title Of Usgs Contact Person
 Address
 E-Mail Address
 Telephone # Number
 FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Agreement is subject to the appropriation and availability of state and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Agreement upon written notice to the USGS. Said termination shall not be deemed a breach of Agreement by the State. Upon receipt of the written notice, the USGS shall cease all work associated with the Agreement. Should such an event occur, the USGS shall be entitled to compensation for all satisfactory and authorized investigations completed as of the termination date.
- E.4. Incorporation of Additional Documents. Included in this Agreement by reference are the following documents:
- a. The Agreement document and its attachments.
 - b. The U.S. Department of the Interior, U.S. Geological Survey, Joint Funding Agreement (attached hereto as Attachment 1)

In the event of a discrepancy or ambiguity regarding the USGS's duties, responsibilities, and

performance under this Agreement, these documents shall govern in order of precedence detailed above.

IN WITNESS WHEREOF,

U.S. GEOLOGICAL SURVEY:

U.S. GEOLOGICAL SURVEY SIGNATURE

DATE

PRINTED NAME AND TITLE OF U.S. GEOLOGICAL SURVEY SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE

DATE

ATTACHMENT 1

ATTACHMENT 1 TO BE PROVIDED BY THE US DEPARTMENT OF THE INTERIOR, US GEOLOGICAL SURVEY, JOINT FUNDING AGREEMENT WILL COMPLY WITH FORM 9-1366 AS MAY BE AMENDED.

TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the standard GU-USGS Model by including the following content as appropriate.

Complete template fields and follow, replace, or otherwise address red instructional text (e.g., *State Agency Name, amount, will/will not*) as indicated and with conforming font and color.

Complete summary cover fields as indicated within the template and the following field directions.

Agency Tracking # unique tracking number comprised of: 5-digit business unit # + unique, 5-digit #
example: 31707-12345

Funding amounts by fiscal year and funding source with row and column totals;
contract maximum liability MUST equal the sum of the TOTAL Contract Amount column (i.e., the grand total amount for all fiscal years & all sources of funding)

A summary cover sheet properly completed and in accordance the template is required for every copy of the contracting document.

PREAMBLE

Add additional information only if necessary.

A. SCOPE OF SERVICES

Do NOT include payment terms in the scope of services.

Draft the scope of services to clearly, specifically, and definitively detail USGS duties, responsibilities, and associated performance requirements and describe, in detail, the service and deliverable requirements and all related specifications:

B. TERM OF AGREEMENT

Do NOT route the Agreement for approval after the Effective Date.

Draft the agreement with an appropriate, definitive, and complete agreement period not to exceed the five (5) year maximum permitted by service contracting rules.

Option: Term Renewal or Extension

To reserve the right to extend the Agreement's Term, change the designation of the paragraph under B. to B.1. and add one or both of the following sections, revising the length of the extension period(s) as appropriate.

B.#. Renewal Options. This Agreement may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **number (#)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

B.#. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Agreement, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS

The default payment methodology used in the template provides for unit, milestone & temporal rate payments.

Revise Payment Terms and Conditions sections only as provided in the instructions.

If agreement includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates) the payment terms MUST also include provisions that describe EXACTLY how the state will audit contractor expenditures to ensure that the state only pays for actual, reasonable, necessary and allowed costs and that such costs resulted from competitive procurements.

| The reimbursement of actual costs in a fee-for-service contract is NOT recommended.

Payment Methodology

Option: Payment Upon Completion

If the maximum liability is less than or equal to \$25,000.00 OR the agreement period is less than 3 months, draft the contract with the following sections, C.1, C.2, C.3, C.4, and C.5, to effect one payment after completion of all work under the contract.

Revise the minimally required invoice elements in section C.5. as appropriate.

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Agreement exceed **WRITTEN DOLLAR AMOUNT (\$NUMBER)**. This amount shall constitute the entire compensation due the USGS for the investigations and all of the USGS's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. The Agreement Amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the USGS.
- C.2. **Compensation Firm.** The maximum liability of the State under this Agreement is firm for the duration of the Agreement and is not subject to escalation for any reason unless amended.
- C.3. **Payment Methodology.** Upon completion of the work described in Section A of this Agreement, the USGS shall be compensated **WRITTEN DOLLAR AMOUNT (\$NUMBER)**.
- C.4. **Travel Compensation.** The USGS shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. **Invoice Requirements.** The USGS shall invoice the State after completion of the work described in Section A of this Agreement, and as required below prior to any payment.
- a. The USGS shall submit an invoice, with all necessary supporting documentation, to:
- STATE AGENCY BILLING ADDRESS**
- b. Such invoice shall clearly and accurately detail the following required information.
- (1) Invoice Number (assigned by the USGS);
 - (2) Invoice Date;
 - (3) Agreement Number (assigned by the State to this Agreement);
 - (4) Account Name: **PROCURING STATE AGENCY & DIVISION NAME**;
 - (5) Account Number (uniquely assigned by the USGS to the above-referenced Account Name);
 - (6) USGS Name;
 - (7) USGS Tennessee Edison Registration ID Number Referenced in Preamble of this Agreement;
 - (8) USGS Contact for Invoice Questions (name, phone, and/or fax);
 - (9) USGS Remittance Address;
 - (10) Description of Completed Investigation; and
 - (11) Total Amount Due for Completed Investigation (as stipulated in Section C.3. above).

- c. The USGS understands and agrees that the invoice shall:
- (1) include only charges for investigations described in Agreement Section A and in accordance with payment terms and conditions set forth in Agreement Section C;
 - (2) only be submitted for completed work and shall not include any charge for future work; and
 - (3) not include sales tax or shipping charges.

Invoice Requirements

Add clear, non-conflicting, invoice requirements to this section as appropriate.

Revise the section to require or permit invoices more or less often than monthly.

D. STANDARD TERMS AND CONDITIONS

Termination for Convenience

Increase notice requirement days as appropriate.

D.4. Termination For Cause (Cure Option)

Replace the section with the following termination provision as appropriate and in the best interest of the state.

D.4. Termination for Cause. If the USGS fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the USGS violates any terms of this Agreement, the State shall have the right to terminate the Agreement and withhold payments in excess of fair compensation for completed investigations.

- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the USGS with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the USGS fails to correct the breach. The USGS must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the USGS intentionally refuses to perform. The State will not consider a request to cure performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.
- b. Notwithstanding the foregoing, the USGS shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Agreement by the USGS, however, the extent of possible damages is limited by the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*).

D.7. Nondiscrimination

F&A Rule 0620-3-3-.05 provides:

- (5) All contracts subject to these rules shall specifically state: "The Contractor [Grantee] hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract [Grant] or in the employment practices of the Contractor [Grantee] on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor [Grantee] shall, upon

request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination."

Accordingly, an approved a rule exception is required to draft the contract with the alternative text (previously accepted by the USGS) that is detailed within the template.

Complete and use the template request format on the following page to obtain approval for the rule exception.

Prevailing Wage Rates

This section is drafted permissively and may remain in each contract even if it is not applicable. It may be omitted, EXCEPT in a contract involving construction and where the maximum liability is in excess of \$50,000.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as indicated and in the order below. Afterwhich, add other special terms and conditions sections as appropriate, provided that none conflict with state interests or standard contract provisions.

Wherever instructions direct legal counsel involvement, compliance will be assumed.

Printing Authorization

Add the following section as appropriate.

E.#. Printing Authorization. The USGS agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

State Ownership of Work Products

As appropriate, add the following section or an alternative recommended by the contracting agency legal counsel.

E.#. State Ownership of Work Products. The State understands that the USGS is ineligible for copyrights in the U.S. on its Work Products under 17 USC 105. Therefore, such products are in the U.S. public domain and may be used by anyone.

- a. To the extent that the USGS uses any of its pre-existing, proprietary or independently developed tools, materials or information ("USGS Materials"), the USGS shall retain all right, title and interest in and to such USGS Materials, and the State shall acquire no right, title or interest in or to such USGS Materials EXCEPT the USGS grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any USGS Materials reasonably associated with any Work Product provided under the Agreement.
- b. The USGS shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and USGS Materials reasonably associated with any Work Product, in accordance with this Agreement and applicable Federal and state law.
- c. Nothing in this Agreement shall prohibit the USGS's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the investigations requested under this Agreement.

- d. Nothing in the Agreement shall prohibit the USGS from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Agreement.

Competitive Procurements

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

- E.#. Competitive Procurements. This Agreement provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The USGS shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Agreement. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the **Procuring State Agency Head Title**, for such decision and non-competitive procurement.

OR...

- E.#. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement.

State Furnished Property

Add the following section as appropriate.

- E.#. State Furnished Property. The USGS shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the USGS's temporary use under this Agreement. Such property will not be tracked in the USGS property database. Upon termination of this Agreement, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the USGS shall be responsible to the State for the residual value of the property at the time of loss.

SIGNATURES

Draft the agreement so that the signature section immediately follows the previous section text separated by only one blank line. Do NOT insert an arbitrary page break prior to the signature section.

By agreement signature, the contracting agency head shall assure and affirm that:

1. there is a balance in the appropriation from which obligations under the agreement are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover; and,
3. the proposed scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.

**GRANT CONTRACT (GG) AND
GOVERNMENTAL GRANT (GR)
TEMPLATES – D.23. LIMITATION OF
STATE’S LIABILITY**

REQUEST: Replace the current D.23. State Liability clause include in the Grant Contract (GR) Template and the Governmental Grant (GG) Template with the following.

Current Language:

D.23. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.

Proposed Change:

D.23. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Grantee or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.

**FA TEMPLATE - CONTRACTOR
COMMITMENT TO DIVERSITY**

REQUEST: Revise the “Contractor Commitment to Diversity” clause included in the FA Template as follows.

Contractor Commitment to Diversity

Add the following Section as appropriate (typically in contracts resulting from a standard RFP).

E.#. 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** (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, and Tennessee service-disabled veterans. 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>.

1. Statewide Contract Reports

All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator’s specifications. All reports shall be provided at no additional cost to the State.

(1) Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than twenty (20) days after the end of the State’s quarter (e.g. a fiscal year quarter 2 report for October – December is due no later than January 20th). At the Contract Administrator’s sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities, quasi-governmental bodies (“Other Governmental Bodies”), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report’s statistical data shall be detailed and broken down by line item to include:

- i. Edison contract number
- ii. Contract line item number
- iii. Invoice date
- iv. Invoice number
- v. Vendor part number
- vi. Item or bundle description
- vii. Quantity purchased
- viii. Unit of measure
- ix. Unit of measure description
- x. Name of State Agency, Other Governmental Body or not-for-profit entity
- xi. Identity of purchaser: State entity or non-State entity
- xii. State Agency location

- xiii. Unit/Contract price per line item
- xiv. List price as listed in Contractor's catalog if catalog item.
- xv. Sub-totals for each category above
- xvi. Grand totals for each category above

(2) Diversity Business and Subcontractor Usage Reports: The Contractor shall submit monthly reports of returns, credits, savings, net purchases, and percent of net purchases by subcontractors, small business enterprises, and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be submitted 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>.

(3) Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

**CERTIFICATION RELATED
DOCUMENTATION**



STATE OF TENNESSEE
PROCUREMENT COMMISSION

3rd Floor, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102
(615) 741-1035 Fax (615) 741-0684

RE-CERTIFICATION

1. Item No. 763.93
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation, TDOT Region I Offices,
7345 Region Lane, Knoxville, Tennessee 37914.
Annual Price: \$60,311.88 annually, or \$0.8246538 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2017 – 03/31/2018

2. Item No. 763.A66
Service: Day Porter/ Janitorial Services
Agency/Location: Tennessee Department of Transportation, TDOT Region IV
Headquarters, 300 Benchmark Road, Jackson, Tennessee 38301.
Annual Price: \$20,543.28 annually, or \$9.8766 per hour for an annual total of 2080
hours.
No price increase requested
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2017 – 03/31/2018

3. Item No. 763.21D
Service: Ground Maintenance Services
Agency/Location: Tennessee Department of Mental Health, Cloverbottom
Developmental Center, 275 Stewarts Ferry Pike, Nashville, Tennessee 37214.
Annual Price: Scheduled Services: \$173,242.80 annually, or \$4,812.30 per cycle for an
annual total 36 cycles. Non-Scheduled Services: \$33,475.50 annually, or \$11.53 per hour
for an annual total of 2,904 hours.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2017 – 03/31/2018

LARRY MARTIN, Chairman
Commissioner of Finance & Administration

JUSTIN P. WILSON
Comptroller of the Treasury

ROBERT E. OGLESBY
Commissioner of General Services

MIKE PERRY
Chief Procurement Officer

4. Item No. 763.A143
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation, TDOT Region II HQ, Regional Transportation Management Center, 7500 Volkswagen Drive, Chattanooga, Tennessee 37421.
Annual Price: \$23,638.32 annually, or \$0.6874 per square foot annually.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2017 – 03/31/2018

5. Item No. 763.A172
Service: Janitorial Services
Agency/Location: Tennessee Department of Environment & Conservation, Bledsoe Creek State Park, 400 Zieglers Fort Road, Gallatin, Tennessee 37066.
Annual Price: March – November: \$17,044.88 annually or \$12.31 per hour per square foot 7 days a week. December – February: \$3,567.88 annually, or \$13.07 per hour per square foot 5 days a week.
Price increase requested: The increase is due to a square footage increase for the facilities being serviced. March – November: Increased from 9,528 square feet to 13,422 square feet. December – February: Increased from 7,578 square feet to 10,581 square feet.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2017 – 03/31/2018

6. Item No. 763.A74
Service: Ground Maintenance Services
Agency/Location: Tennessee Department of Environment & Conservation, Bicentennial Capital Mall State Park, 600 James Robertson Pkwy, Nashville, Tennessee 37243.
Annual Price: \$50,102.35 or \$1,391.73 per cycle.
No price increase requested, however, ground maintenance services and janitorial/day porter services at Bicentennial Capital Mall State Park were previously combined within the same Certification packet.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2017 – 03/31/2018

7. Item No. 763.B74
Service: Janitorial and Day Porter Services
Agency/Location: Tennessee Department of Environment & Conservation, Bicentennial Capital Mall State Park, 600 James Robertson Pkwy, Nashville, Tennessee 37243.
Annual Price: \$62,264.73 or \$ 5,188.73 per month. Hourly porter rates are:
Crew member \$11.90 per hour, Supervisor \$16.76 per hour
No price increase requested, however, ground maintenance services and janitorial/day porter services at Bicentennial Capital Mall State Park were previously combined within the same Certification packet.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 04/01/2017 – 03/31/2018

NEW CERTIFICATION

8. Item No. 763.A181

Service: Janitorial and Ground Maintenance Services

Agency/Location: Tennessee Department of Environment & Conservation, Long Hunter State Park, 2910 Hobson Pike, Hermitage, Tennessee 37076.

Annual Price:

Line 1: The requested price is: \$10,803.00 annually or \$14.09 per hour.

Line 2: The requested price is: \$23,635.95 annually or \$14.39 per hour.

Line 3: The requested price is: \$10,791.75 annually or \$719.45 per cycle.

Line 4: The requested price is: \$2,247.95 annually or \$449.59 per cycle.

Satisfaction: No complaints have been filed.

Certification Requested for Period of 04/01/2017 – 03/31/2018

LIMITATION OF LIABILITY REPORT

**Approved Limitation of Liability Requests
for the Time Period February 2, 2017 to March 31, 2017**

TRACKING	CALENDAR YEAR	ID	LOGGED	STATUS	STATUS DATE	SERVICE	CONTRACTING AGENCY	BASIS FOR REQUEST	COT APPROVAL OF REQUEST
35910-02029	17	8409	3/23/2017	APPROVED	3/24/2017	FOSTER AND RESIDENTIAL CARE AND TREATMENT	DEPARTMENT OF CHILDREN'S SERVICES	THE STATE'S TOTAL LIABILITY UNDER THIS CONTRACT OR OTHERWISE SHALL UNDER NO CIRCUMSTANCES EXCEED THE GREATER OF A) FIVE MILLION DOLLARS (\$5,000,000) OR B) AN AMOUNT EQUAL TO TWO (2) TIMES THE AMOUNT PAID TO THE STATE UNDER SECTION C.1.	3/28/2017

CORRECTION OF ERRORS REPORT
(NOTHING TO REPORT THIS PERIOD)

MEMORANDUM OF UNDERSTANDING REPORT

Number	SWC # / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
87	49074	KONE Elevator Maintenance	Chris Romaine	KONE Inc.	KONE Elevator Maintenance	2/2/2017	Adds elevator service locations
88	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Medical Lab Technician 2
89	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Medical Lab Technician 3
90	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Medical Technologist 3
91	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Medical Technologist 4
92	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Medical technologist Supervisor
93	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Licensed Professional Counselor
94	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Programmer/Analyst 5
95	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Programmer/Analyst 6
96	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Database Administrator 5
97	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/8/2017	Database Administrator 6
98	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/21/2017	Nurse Supervisor
99	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/21/2017	Epidemiologist 1
100	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/21/2017	Epidemiologist 2
101	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/21/2017	Dietician
102	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	2/21/2017	Dietician (Rural)
103	36239	Facilities Management Services	Chris Romaine	Jones Lang LaSalle Americas Inc	Facilities Management Services	3/6/2017	List of Facilities Updated
104	36239	Facilities Management Services	Chris Romaine	Jones Lang LaSalle Americas Inc	Facilities Management Services	3/6/2017	Executive Steering Committee Membership Updated