

This form is fillable



CONTRACT

(state revenue contract with an individual, business, non-profit, or government entity of another state or country and from which the state receives monetary compensation)

Begin Date	End Date	Agency Tracking # 40100-09816	Edison ID
Procuring Party Legal Entity Name		Procuring Party Registration ID	
Service Caption Overweight and Over-dimensional Permitting System			
Ownership/Control <input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:			
Selection Method & Process Summary (mark the correct response to confirm the associated summary)			
<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.		
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.		
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.		
<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive procuring party selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.		
<input checked="" type="checkbox"/> Other	The procuring party selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."		
Agency Contact & Telephone #		<i>OCR USE - RV</i>	

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and _____, hereinafter referred to as the "Procuring Party," is for the provision of Overweight and Over-dimensional Permitting System, as further defined in the "SCOPE OF SERVICES."

The Procuring Party is
Procuring Party Place of Incorporation or Organization:

A. SCOPE OF SERVICES:

- A.1. Issuance of Overweight and Overdimensional Permits. In accordance with Tennessee Code Annotated, Section 55-7-205, the State has the authority to grant special permits, hereinafter referred to as Permit(s), for the movement of freight motor vehicles carrying gross weights in excess of the limits set forth in TCA, Section 55-7-203, or dimensions in excess of the limits set forth in TCA, Sections 55-7-201 and 55-7-202. The Procuring Party may apply for and obtain Permits from the State for itself and its customers. The issuance of permits is governed by the applicable statutes and Chapter 1680-2-2 of the Rules of the Tennessee Department of Transportation, as such statutes and rules may from time to time be amended and construed.
- A.2. Computerized Permit Issuance System. The Procuring Party shall conduct business with the State through a computerized permit issuance system, hereinafter referred to as the TOOPS System. To complete permit transactions with the State under the electronic TOOPS system, the Procuring Party must have desktop computer configurations that meet or exceed the minimums set forth in Attachment A to this contract, which is incorporated herein by reference. Additional recommended desktop configurations are also included in Attachment A. The requirements and recommendations contained in Attachment A may be amended from time to time based on changes in technology. The Procuring Party shall conduct business in TOOPS and agrees to the provisions as listed in Attachment C and D.
- A.3. Required Software. The Procuring Party shall use TOOPS via a web browser using the appropriate version of the internet explorer or Fire Fox as provided in Attachment A. The Procuring Party shall be required to have each user sign an acceptable user policy network access rights and obligations user agreement acknowledgement, as provided in Attachment B.
- A.4. Training. The Procuring Party shall send personnel at its own expense to the State headquarters for training on the TOOPS System. Any additional training shall be coordinated with the State and shall be at the Procuring Party's expense.

B. TERM OF CONTRACT:

This Contract shall be effective on July 1, 2015 ("Effective Date"), and extend for a period of _____ after _____ the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Procuring Party prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Fees and Charges. In consideration for the granting of a Permit through the TOOPS System, the Procuring Party shall pay the State the fee required under the schedule set forth in TCA Section 55-7-205, and the additional fee of one dollar (\$1.00) as an administrative charge.
- C.2. Escrow Account. Before obtaining any Permit through the TOOPS System, the Procuring Party shall establish an escrow account with the State to ensure timely payment of all fees and charges

due for Permits that may hereafter be issued to the Procuring Party. The amount to be placed in escrow shall be not less than \$5,000.00, which is the amount equal to one-twelfth (1/12) of the total fees and charges for Permits issued to the Procuring Party by the State during the preceding twelve (12) months. If the Procuring Party has less than twelve (12) months of Permit transactions with the State, the initial escrow deposit shall be set at an amount not less than Five thousand dollars and no cents (\$5,000.00). The State may draw on this escrow account as needed to obtain payment for all Permit fees and charges due.

- C.3. Payment for Permits. The Procuring Party shall remit to the State the total amount of fees and charges due, with such accounting documentation as the State may in its discretion require, and such amount shall be deposited into the Procuring Party's escrow account.
- C.4. Insufficient Funds. If the funds in the escrow account are insufficient to cover the amount of fees and charges due for the Permits to be issued, the State shall have the right to withhold the issuance of any Permit and to reject any applications for Permits from the Procuring Party until such time as the Procuring Party had deposited funds into the escrow account sufficient to cover the payment for the issued Permits and maintain the required escrow balance.
- C.5. Periodic Adjustments. The State reserves the right at any time to adjust the amount of funds, either upward or downward, that the Procuring Party shall be required to maintain in its escrow account. The adjusted amount shall be determined by calculating the average monthly dollar amount of fees and charges for Permit transactions conducted by the Procuring Party for a period, not to exceed twelve (12) months, preceding the date of the adjustment. The State shall give the Procuring Party at least seven (7) days written notice of the adjusted escrow amount to be required.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, 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 Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract 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 Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.

Upon such termination, the Procuring Party shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior

written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).

- D.6. Conflicts of Interest. The Procuring Party warrants that 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 Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure 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 or in the employment practices of the State or the Procuring Party 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.
- 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 three (3) 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.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee 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 services. 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.
- Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*
- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract 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.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.15. Completeness. This Contract 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 Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract 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 Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D. 18. HIPAA Compliance. The State and Procuring Party shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").
- a. Procuring Party warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Procuring Party warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Procuring Party will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Procuring Party in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.
 - d. The Procuring Party will indemnify the State and hold it harmless for any violation by the Procuring Party or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

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 Contract, 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 Contract 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:

Bob Alwine, Director – Central Services

Tennessee Department of Transportation
800 James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
bob.alwine@tn.gov
Telephone # 615-741-7750
FAX # 615-741-8993

The Procuring Party:

Procuring Party Contact Name & Title
Procuring Party Name
Address
Email 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. Tennessee Department of Revenue Registration. The Procuring Party shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

E.4. Debarment and Suspension. The Procuring Party certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them 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. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Procuring Party shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

IN WITNESS WHEREOF,

PROCURING PARTY LEGAL ENTITY NAME:

PROCURING PARTY SIGNATURE

DATE

PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

DEPARTMENT OF TRANSPORTATION:

JOHN C. SCHROER, COMMISSIONER

DATE

**JOHN REINBOLD, GENERAL COUNSEL
APPROVED AS TO FORM AND LEGALITY**

DATE