



**STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES**

**REQUEST FOR PROPOSALS
FOR
FUEL CARD PROGRAM**

RFP # 32101-15108

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
Attachment 1 - Attestation Re Personnel Used In Contract Performance
Attachment 2 – Tennessee Enterprise Architecture Standards
- 6.7. Request for Confidential Documents

1. INTRODUCTION

The State of Tennessee, Department of General Services, hereinafter referred to as “the State,” has issued 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 businesses, 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. Definitions and Abbreviations

DEFINED ABBREVIATIONS OR TERMS USED THROUGHOUT THE RFP.

TERM	DEFINITION
POS	Point of Sale
Level III Data	Line-item detail on transactions that provides information similar to an itemized invoice. The detail can include, but is not limited to, item description, item quantity, item unit of measure, item total cost, item commodity code, item product code, item unit cost, and item VAT (value-added-tax) amount/rate.
PIN	Personal Identification Number. PIN number for individual fuel cards
Automotive Products	Limited to <u>only</u> gasoline (unleaded regular, unleaded plus and unleaded premium), Number 2 diesel fuel (low and ultra-low sulfur), alternative fuel (E85 & B20), motor oil, anti-freeze, and car washes.
Aggregate Quarterly Retail Purchase Amount	The total quarterly contract charges accumulated by the State excluding exempted taxes
ACH	Automated Clearing House
MVM	Motor Vehicle Management
OFM	Office of Financial Management
Contract Administrator	State employee responsible for the management of the resulting contract
MCC	Merchant Category Code
SIC	Standard Industry Classification
ASP	Application Service Provider
STS	Strategic Technology Solutions
EMV / Chip and PIN-enabled	technical standard for smart payment cards in which data is stored on integrated circuits as an alternative or an addition to the magnetic strips on the back of cards
Client Held Days	Average daily balance owed by the State

1.2 Statement of Procurement Purpose

The State intends to secure a contract for a fuel card program to purchase Automotive Products..

All fuel and services covered under this contract will be purchased by the State at various locations within all ninety-five (95) counties of the State; however, no minimum level of consumption or compensation will be guaranteed under any contract resulting from this RFP.

The State requires the net out or rebate of federal fuel taxes, TN state fuel taxes, and TN sales taxes on each transaction

- 1.2.2. The State currently has approximately 30,000 transactions per month in fuel purchases and requires approximately 7,000 cards. The State spent approximately sixty million (\$60,000,000.00) over the previous contract's five (5) year period.

1.3. 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.

1.4. 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.

1.5. RFP Communications

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

RFP # 32101-15108

- 1.5.2. **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.**

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

Chris Romaine
 Department of General Services
 Central Procurement Office
 312 Rosa L. Parks Avenue - 3rd Floor
 Nashville, TN 37243
Christopher.Romaine@tn.gov
 (615) 253-5613

- 1.5.2.2. 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:

Helen Crowley
 Department of General Services
 Central Procurement Office
 312 Rosa L. Parks Avenue - 3rd Floor
 Nashville, TN 37243
Helen.Crowley@tn.gov
 615-741-3836

- 1.5.3. 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.
- 1.5.4. 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.
- 1.5.5. 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.
- 1.5.6. 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 1.9).
- 1.5.7. 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>.
- 1.5.8. 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.
- 1.5.9. 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.

1.6. **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.

1.7. Respondent Required Review & Waiver of Objections

- 1.7.1. 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").
- 1.7.2. 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.
- 1.7.3. 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.

1.8. 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:
 State of Tennessee
 Conference Room F
 3rd Floor, William R Snodgrass Tennessee Tower
 312 Rosa L. Parks Ave.
 Nashville, TN 37243

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 1.9 and on the date detailed in the RFP Section 2, Schedule of Events.

1.9. 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
- 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.

1.10. 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. A response must respond, as required, to this RFP (including its attachments) as may be amended. 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.

1.11. **Tennessee Enterprise Technology Architecture Standards**

The State maintains a document entitled *State of Tennessee Enterprise Technology Architecture Standards*. This document provides a list of State-standard hardware and software and will be the basis for determining which proposed products are standard, and which are deviations from State standards.

The vendor may request a copy of the Technology Architecture by submitting a written request (an email will suffice) to the Solicitation Coordinator listed in 3.2. The content of this document may prompt vendor questions and/or significantly impact the vendor's proposal; therefore the State encourages interested vendors to request this document and review it carefully prior to the Written "Questions and Comments Deadline given in the Schedule of Events.

In order to obtain a copy of the *State of Tennessee Enterprise Technology Architecture Standards*, Potential bidders must send in their "Intent to Respond" and the signed *Confidentiality Agreement* attached to the RFP as RFP Attachment 6.7.

Once the signed *Confidentiality Agreement* is received by the State, the State will send a copy of *Tennessee Enterprise Technology Architecture Standards*. Prospective respondents must propose any exceptions to standards during the written "Questions and Comments" phase of the solicitation.

When a contract is executed pursuant to this RFP, the *State of Tennessee Enterprise Architecture* will be included as Contract Attachment 2.

1.12. **Exceptions to the Tennessee Enterprise Technology Architecture Standards**

The State recognizes there may be cases where use of a non-standard technology product is justifiable. Potential bidders may request a waiver or an exception to a policy or standard via the State's Waiver / Exception Request Process in order to implement proposed new functionality and/or technologies.

Non-State standard products are defined as:

Any software that is not listed and designated as "Current" in, or is not compatible with the standards listed in the Enterprise Technology Architecture; or any hardware that is not listed and designated as "Current" in, or is not compatible with standards listed in the Enterprise Technology Architecture.

The use of non-State standard technology products in the proposed solution requires an approved exception to State standards. Respondents must submit exception request(s) to the State well before the response submission deadline so that they may adjust their responses depending on State approval or rejection of the requests. Respondents must submit exception requests in writing (email is acceptable) to the Solicitation Coordinator so that the State receives them by no later than the Written "Questions and Comments" Deadline in the Schedule of Events.

For each non-State standard product, the Respondent must include the following information in the exception request:

- a. List the Standard product to be replaced (if applicable)
- b. List the exception product being requested
- c. Describe why the State standard product will not support the solution, the functionality provided by the exception product, and how the exception product will be used in the proposed solution.

d. If there is no Domain, Discipline, Technology, or Product Component listed in the Enterprise Technology Architecture that the respondent intends to propose (i.e., there is no current State standard for the product), the vendor should request an exception to use the product in question.

Proposing non-State standard product(s) that are not pre-approved will delay response evaluation and risk disqualification of the response.

Waiver / Exception requests will be forwarded to the Office of Information Resources and approved or disapproved by the State Response to written "Questions and Comments" deadline in the Schedule of Events.

Submitted responses will be reviewed for non-State standard products and handled as follows:

Responses that include non-State standard product(s), which were submitted to the State as a Written Comment and approved, will not be disqualified for proposing the approved non-State standard product(s).

Responses that include non-State standard product(s), which were submitted to the State as a Written Comment and disapproved, will be disqualified for proposing the disapproved non-State standard product(s); unless the Respondent will agree, through a written clarification response, to replace the disapproved product(s) with product(s) approved by STS, at no additional cost to the State.

For Responses that include non-State standard product(s), which were not submitted to the State as a Written Question and approved as an exception, STS will evaluate the proposed product(s) on a case by case basis. The decision to allow or disallow such products shall be at STS's sole discretion and shall be documented through a written clarification. If product(s) are disallowed, the Response will be disqualified, unless the Respondent will agree, through a written clarification response, to replace the disapproved product(s) with product(s) approved by STS, at no additional cost to the State.

The State will publish a list of the approved and disapproved exceptions as an amendment to the solicitation. Approval of an exception for any given respondent grants permission for any Respondent to use that product in their solution, i.e., use of an approved non-State standard product is not limited to the respondent that submitted the written request for approval.

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		June 29, 2016
2. Disability Accommodation Request Deadline	2:00 p.m.	July 5, 2016
3. Pre-response Conference	2:00 p.m.	July 11, 2016
4. Notice of Intent to Respond Deadline	2:00 p.m.	July 12, 2016
5. Written "Questions & Comments" Deadline	2:00 p.m.	July 15, 2016
6. State Response to Written "Questions & Comments"		July 22, 2016
7. Response Deadline	2:00 p.m.	July 29, 2016
8. State Completion of Technical Response Evaluations		August 5, 2016
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	August 8, 2016
10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	August 11, 2016
11. End of Open File Period		August 18, 2016
12. State sends contract to Contractor for signature		August 19, 2016
13. Contractor Signature Deadline	2:00 p.m.	August 31, 2016
14. Contract Start Date		September 1, 2016

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 1.9).

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 oversized 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 respond 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.

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 # 32101-15108 TECHNICAL RESPONSE ORIGINAL”

and Five (5) 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 # 32101-15108 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 # 32101-15108 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 # 32101-15108 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 # 32101-15108 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 # 32101-15108 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 # 32101-15108 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:

Chris Romaine
 Department of General Services
 Central Procurement Office
 312 Rosa L. Parks Avenue - 3rd Floor
 Nashville, TN 37243
 Christopher.Romaine@tn.gov
 (615) 253-5613

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 1.9). 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**

From time-to-time, the State may 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. Notwithstanding the foregoing, a list of actual Respondents submitting timely responses may be available to the public, upon request, after technical responses are opened.
- 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 *Tennessee Code Annotated*, Section 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 start date or after the Contract end date.
- 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 of service, 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)	15
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	50
Cost Proposal (refer to RFP Attachment 6.3.)	35

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:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. 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 to 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 ATTACHMENT 6.1.**RFP # 32101-15108 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 Services of the RFP Attachment 6.6., *Pro Forma Contract* for the total contract period.
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.

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:**

**RESPONDENT FEDERAL EMPLOYER IDENTIFICATION NUMBER (or
SSN):**

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 sub-contractor) (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.	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.	
	A.4.	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.	
	A.5.	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 rating for the Respondent (NOTE: A credit bureau report	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		number without the full report is insufficient and will <u>not</u> be considered responsive.)	
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

RFP ATTACHMENT 6.2. — SECTION B

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.	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. 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.
	B.10.	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. 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

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. <p>The State is under <u>no</u> obligation to clarify any reference information.</p>
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(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;</p> <p>(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</p> <p>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.</p>
		<p>SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = 15)</p>
State Use – Evaluator Identification:		

RFP ATTACHMENT 6.2. — SECTION C

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.		5	
	C.2.	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.		5	
	C.3.	Provide a detailed description of the Respondent's ability to net out or rebate federal fuel taxes, TN state fuel taxes, and TN sales taxes on each transaction. Please be specific to include those situations where transactions are not automatically identified/exempted at the POS.		5	
	C.4.	Provide a detailed description of the Respondent's ability to reflect the interface transaction amounts identified in RFP Attachment 6.6 section A.5.b.3 as net of all exempted taxes (even if the POS doesn't show them as exempt)		5	
	C.5.	Software Browser The Respondent will provide a diagram of its system software and will provide assurance that the current structure will have complete compatibility with the minimal technical requirements that have been established through the State's current technical architecture.		5	
	C.6.	Network and Connectivity The Respondent shall provide an itemization of all major systems, components, layouts and/or diagrams to support the network and associated connectivity in the state production environment		5	
	C.7.	Data Backup The Respondent shall provide documentation of how it provides for the storage and management of data that is being stored at the vendor site. This section should describe how often complete data backups vs. incremental data backups are performed, and how the vendor protects the data through off-site storage and transport.		5	

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.8.	<p>Disaster Recovery</p> <p>The Respondent shall provide documentation of its Disaster Recovery Plan. The Respondent shall provide an alternate processing arrangement that will have the State's system operational after a disaster, whether natural or man-made, within 24 hours. The Respondent shall identify its alternative processing site and the disaster recovery testing cycle and frequency.</p>		5	
	C.9.	<p>Internal Controls and Security</p> <p>The Respondent must fully describe its approach to application and system security, including but not limited to the use of firewall hardware and software and how these will be configured in their network. The Respondent must provide a security infrastructure diagram and submit a narrative response to each of the sections on the diagram explaining how their proposal addresses each element of the security infrastructure. Respondents must describe how they would:</p> <ul style="list-style-type: none"> • Ensure that the State's confidential data is protected from unauthorized access while: <ol style="list-style-type: none"> 1. In transit – provide the ability to execute secure, authenticated, two-way transactions to ensure confidential data is protected from unauthorized use, modification or destruction. 2. In storage – provide the ability to encrypt confidential data as well as segment and separate confidential data from public data to ensure that confidential data in databases from which public data is being extracted will not be compromised; <p>Ensure integrity of data – describe how data and transaction integrity and confidentiality will be maintained; address legal issues with regard to misuse or fraud and options for resolution;</p> <ul style="list-style-type: none"> • Ensure data reliability – describe how sufficient detail and summary information will be maintained to ensure statutory and regulatory reporting and compliance responsibilities; • Ensure data availability – describe how data and network access continuity will be maintained, ensuring its availability for required business processes; • Ensure physical and environmental control – describe method planned to prohibit users from accessing data or computer facilities unless such access was expressly approved by the State; and determine environmental control required to mitigate the risk of loss of resources; <p>• Provide authentication – Discuss the</p>		15	

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
		<p>authentication mechanism and/or platforms which provide authentication services within the environment including multi-factor authentication services and/or physical authentication or biometrics utilized at facilities.</p> <ul style="list-style-type: none"> • Provide audit capabilities – implement date-time stamp and an audit trail for identifying all network security breaches and attempted breaches; implement penetration analysis and intrusion detection policies to ensure that the Portal remains as secure as possible over time. • Provide a security assessment – The Contractor shall implement biannual third party security assessments (e.g. penetration tests, vulnerability scanning and reporting) to ensure that the portal remains as secure as possible over time. The Contractor shall ensure that the results are delivered to the State in a timely fashion and that there is a secure mechanism for the delivery of the assessment reports. <p>The proposal must describe how the Respondent would tie into existing State Directory Servers for authentication if the State required this capability.</p> <p>The Respondent must also describe how the system architecture and design supports the State's security policy requirements.</p> <p>The Respondent must provide a minimum of network, server, and transaction security concerning each part of their diagram. Full audit trails must be maintained throughout the entire transaction lifetime. A rigorous change management and configuration management process must be designed to ensure security and availability.</p> <p>The proposal must describe how the Respondent would tie in to existing State Directory Servers for authentication if the State required this capability</p>			
	C.10.	<p>Provide a Power Point Presentation of how the fuel card will look, key functions, how it will work at the pump, and how a receipt will look.</p> <p>Presentation must include a sample of what the Respondent's invoices will look like and how they are submitted to the State.</p>		5	
	C.11.	<p>Describe understanding and approach to providing an <u>implementation plan</u> as described in RFP Attachment 6.6 - Pro Forma Contract Scope of Services, Section A.7.</p> <p>The Respondent shall provide a detailed <u>Initial Contract Transition Plan</u> that must include at a minimum:</p> <ol style="list-style-type: none"> a. Respondent's implementation team members. b. Timeline, tasks and responsible parties for issuing Fleet Payment Cards by the 		15	

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
		<p>expected available use date of October 1, 2016.</p> <p>c. All customer support that will be provide during initial transition such as on-site visits, technical assistance, program documentation assistance, etc.</p> <p>d. Training plan for the <u>Respondent's Web-Based Program Management and Reporting System</u> for the following groups :</p> <p>i) MVM Contract Administrator</p> <p>ii) State MVM Program Staff</p> <p>iii) State OFM Fiscal Staff</p> <p>e. The process, including sample documentation and file specifications, for establishing agency master accounts with their corresponding contact, hierarchy, SIC/MCC specifications and accounting code validation values</p> <p>f. The process, including sample documentation and file specifications, for establishing current vehicle operator accounts as well as future mass vehicle operator account setups</p> <p>g. The process, including sample documentation and file specifications, for establishing and receiving the <u>Transaction Data Extract File</u> as described in RFP Attachment 6.6 - Pro Forma Contract Scope of Services, Section A.5.</p>			
	C.12.	<p>Security</p> <p>The Respondent shall provide documentation of its approach to security including the ability to meet the following requirements:</p> <p>a. Ensure the implementation of industry and card association standard security guidelines, protocols and procedures.</p> <p>b. Describe fraud detection system that will be used to identify potentially fraudulent transactions and the process to notify the State.</p> <p>c. Provide an audit trail of identifying security breaches.</p> <p>d. Ensure full cooperation with state officials and law enforcement agencies in case of security breaches involving criminal and/or no criminal activity.</p>		15	

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
		<p>e. Describe overall, system-wide restrictions that would limit card use to fuel items only.</p> <p>f. Describe restrictions that can be placed on the card to limit purchases of fuel by type, grade, dollar amount, and volume.</p> <p>g. Describe options available to vehicle operator if a card fails to scan because of a magnetic-stripe or inoperable equipment.</p>			
	C.13.	<p>Describe in detail Respondents ability to support app based devices such as smart phones</p> <p>Describe any apps the Respondent has and their capabilities for system administrators and/or card users.</p>		10	
	C.14.	<p>Provide a description of the electronic record information that will be supplied to the State, with the minimum requirements as stated in the Pro forma Contract section A.5.b.3 (Level III Reporting).</p>		15	
	C.15.	<p>Describe Respondent's plan for:</p> <ul style="list-style-type: none"> • routine day-to-day issuance, replacement and cancellation of cards and/or PINS • expiration terms for cards and PINS 		5	
<p><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></p>					<p>Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i></p>
<p>Total Raw Weighted Score</p> <hr/> <p>Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i></p>					<p>X 50 <i>(maximum possible score)</i></p> <p>= SCORE:</p>
<p><i>State Use – Evaluator Identification:</i></p>					
<p><i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i></p>					

RFP ATTACHMENT 6.3. Section A**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.

Notice: All unshaded cells **MUST** be completed with a percentage greater than zero (“0.0000%”) and with a maximum of four (4) digits to the right of the decimal. Any failure to meet this requirement shall render the proposal non-responsive, and the State will reject it.

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 Rebate Rate	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
Rebate Level 1: \$0.00 - \$1,249,999.99 Aggregate Quarterly Retail Purchase Amount	%	5	
Rebate Level 2 \$1,250,000.00 - \$2,499,999.99 Aggregate Quarterly Retail Purchase Amount	%	10	

RFP ATTACHMENT 6.3. (continued)

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Rebate Rate	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
Rebate Level 3 \$2,500,000.00 - \$3,749,999.99 Aggregate Quarterly Retail Purchase Amount	%	10	
Rebate Level 4 Greater Than or Equal to \$3,750,000.00 Aggregate Quarterly Retail Purchase Amount	%	5	
<p align="center">TOTAL REBATE PERCENTAGE SCORE (sum of evaluation above):</p> <p>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.</p>			
$\frac{\text{total rebate percentage score}}{\text{highest total rebate percentage score from all proposals}} \times 30 \text{ (maximum section score)} = \text{SCORE:}$			
<p><i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i></p>			

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.

Notice: All unshaded cells **MUST** be completed with a percentage greater than zero (“0.0000%”) and with a maximum of four (4) digits to the right of the decimal. Any failure to meet this requirement shall render the proposal non-responsive, and the State will reject it.

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:			
Rebate Percentage for Prompt Payment Incentives	Proposed Rebate Percentage	State Use Only	
		Evaluation Factor	Evaluation Rebate (percent x factor)
<u>Number of Days</u>			
5-10	%	1	
11-15	%	6	
16-20	%	2	
21-29	%	1	
TOTAL REBATE PERCENTAGE SCORE (sum of evaluation 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.			

RFP ATTACHMENT 6.3. (continued)

RESPONDENT LEGAL ENTITY NAME:			
Rebate Percentage for Prompt Payment Incentives	Proposed Rebate Percentage	State Use Only	
		Evaluation Factor	Evaluation Rebate (percent x factor)
$\frac{\text{total rebate percentage score}}{\text{highest total rebate percentage score from all proposals}} \times 5 \text{ (maximum section score)} = \text{SCORE:}$			
<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 # 32101-15108 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?

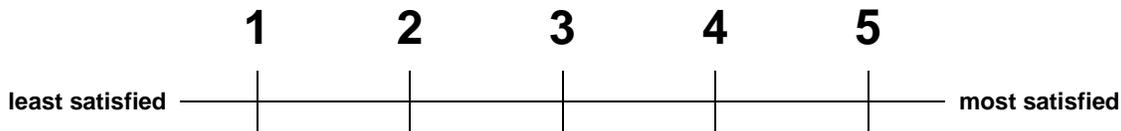
(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.

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.

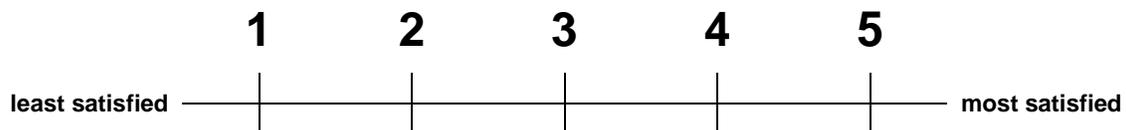


RFP # 32101-15108 REFERENCE QUESTIONNAIRE — PAGE 2

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.

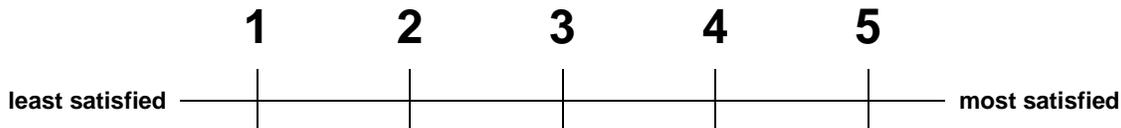


What, if any, comments do you have regarding the score selected above?

RFP # 32101-15108 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?

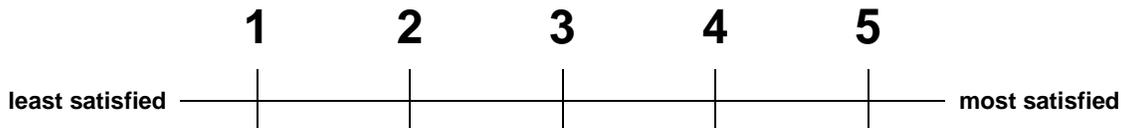
Please respond by circling the appropriate number on the scale below.



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: 15)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: 50)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: 35)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: 100)						

Solicitation Coordinator Signature, Printed Name & Date:

RFP # 32101-15108 *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.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of General Services ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of **a fuel card program**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions and Abbreviations

DEFINED ABBREVIATIONS OR TERMS USED THROUGHOUT THE PRO FORMA.

TERM	DEFINITION
POS	Point of Sale
Level III Data	Line-item detail on transactions that provides information similar to an itemized invoice. The detail can include, but is not limited to, item description, item quantity, item unit of measure, item total cost, item commodity code, item product code, item unit cost, and item VAT (value-added-tax) amount/rate.
PIN	Personal Identification Number. PIN number for individual fuel cards
Automotive Products	Limited to <u>only</u> gasoline (unleaded regular, unleaded plus and unleaded premium), Number 2 diesel fuel (low and ultra-low sulfur), alternative fuel (E85 & B20), motor oil, anti-freeze, and car washes.
Aggregate Quarterly Retail Purchase Amount	The total quarterly contract charges accumulated by the State excluding exempted taxes
ACH	Automated Clearing House
MVM	Motor Vehicle Management
OFM	Office of Financial Management
Contract Administrator	State employee responsible for the management of the resulting contract
MCC	Merchant Category Code
SIC	Standard Industry Classification
ASP	Application Service Provider
STS	Strategic Technology Solutions
EMV / Chip and PIN-enabled	technical standard for smart payment cards in which data is stored on integrated circuits as an alternative or an addition to the magnetic strips on the back of cards
Client Held Days	Average daily balance owed by the State

A.3. General

For the purposes of this contract, the Contractor shall provide a fuel card program to purchase Automotive Products. All Automotive Products covered under contract will be purchased by the

State at various locations within all 95 counties of the State, and other states the Contractors' payment card is accepted. However, no minimum level of consumption or compensation will be guaranteed under any Contract resulting from this solicitation.

- a. The State shall furnish the Contractor a listing of vehicles authorized to obtain fuel under the terms of this contract. The State will designate, in writing, the names of personnel that may set credit limits and/or approve purchases exceeding card limits. The State will be responsible for issuing authorization numbers, and for recording and monitoring such purchases. Purchases by the State are exempt from all eligible State of Tennessee and Federal taxes. Taxes imposed by other states apply on purchases within their jurisdictions. The Contractor shall be able to exempt all eligible taxes prior to submission for payment.
- b. The State will develop its own policies and procedures for the issuance, security and operational matters related to the fuel card program. The Contractor shall assist the State with development, implementation, modification or enhancement of these policies and procedures.
- c. The Contractor will meet quarterly with the State to review contract performance. At such meetings, State representatives may evaluate the Contractor's performance and advise the Contractor of any concerns or issues. Within five (5) business days, the Contractor shall develop a written plan to resolve outstanding issues. The Contractor shall then receive written approval of the plan from the Contract Administrator prior to implementation.
- d. Except as expressly provided to the contrary herein, the State shall be liable for all purchases and other charges incurred or arising by virtue of the use of a fuel payment card. The obligation of the State to make payments under the terms of this Contract shall continue until fully performed. This provision shall survive the termination of this Contract. Individual credit checks shall not be done on vehicle operators, nor shall fleet payment card activity show upon vehicle operator's personal credit histories.

A.4. Fuel Card

The Contractor will provide the State with fuel payment cards used to make payment for a wide variety of fuel products, and services with the following provisions:

- a. Card Design:
 1. The Contractor shall provide Automotive Products and payment services with the use of a plastic card.
 2. The Contractor shall provide a magnetic-stripe card that is EMV/Chip and PIN-enabled designed specifically and exclusively for the State of Tennessee, Motor Vehicle Management (MVM) fuel card program. Each plastic card issued shall, at a minimum:
 - a. Display on the face of the card, the name "State of Tennessee, Department of General Services, MVM," and the State's official Logo.
 - b. Display on the face of the card, the phrase "For Official Use Only – Tax Exempt."
 - c. Display on the back of the card, the Contractor's toll-free "help" telephone number, for services 24 hours, 7 days per week, 365 days a year.
 - d. Account number shall be displayed on the front of the card. Upon contract award vendor and the State shall agree on a numbering sequence for the account number that will be on the front of the card.
 - e. The card shall NOT contain any reference to Automatic Teller Machine (ATM) usage.

- f. The card shall NOT contain the words “purchasing” or “procurement” on the face of the card.
- g. The card shall NOT display other wording, design or card formats unless agreed to in writing between the Contractor and the State.

b. Card Issuance and Replacement

1. The Contractor will issue an initial 6,300 fuel payment cards to the State within thirty (30) days of the Contract start date, via certified or express mail, for delivery during standard state working hours, 8:00 am to 4:30 pm Central Standard Time, to the address listed in item A.4.b.3 of the Contract.
2. The Contractor will issue new and replacement fuel payment cards within one (1) business day of receipt of the request, from the Contract Administrator, at no cost to the State. Unless a fuel payment card has been terminated or canceled, as provided herein, all cards will expire upon the termination of this Contract.
 - a. Standard card replacement shall include but not be limited to, damaged, broken, dysfunctional magnetic strip, lost, or stolen cards.
 - b. Vehicle operators will request a replacement card by contacting the Contract Administrator who will then contact the Contractor for a replacement, when their card has become damaged or broken, contains a dysfunctional magnetic strip, lost or stolen.
3. After initial contract start up, the Contractor will ship fuel cards to the State as requested via certified or express mail, for delivery during standard state working hours, 8:00 am to 4:30 pm Central Standard Time. Cards for the Department of General Services, Motor Vehicle Management are to be delivered to:

Department of General Services
Motor Vehicle Management
Davy Crockett Tower, 3rd Floor
500 James Robertson Pkwy.,
Nashville, TN 37243
4. As designated by the State, fuel cards are to be delivered to other address(es) as may later be deemed necessary by the State.

c. Card Restrictions

The Contractor will provide the State with the ability to order, change, or cancel fuel cards, through a web-based interface.

1. Credit Limit Adjustments
 - a. The Contractor will provide an initial default setting of one hundred dollars (\$100) per transaction.
 - b. The Contractor will allow the State to establish higher or lower credit limits by submitting a written request to the Contractor. Such requests will be processed by the Contractor within 48 hours after the request has been received.
 - c. The Contractor will provide web-based interface by which to approve purchases above card default settings, on a case-by-case basis. This approval process will be available 24 hours per day, 7 days per week, and 365 days a year.
2. SIC or MCC restrictions
 - a. The Contractor shall establish charge authorization procedures to insure that certain transactions are denied. These unauthorized transactions will be based upon Standard Industry Classifications (SIC) or card association Merchant Category Codes (MCC) as determined by the State. The Contractor shall have

no liability or responsibility with respect to the verification or correction of SIC's or MCC's selected by the State or implemented with respect to any provider of fuel products, and automotive parts and services.

- b. The Contractor shall block all authorized cards from the following:
 1. MCC or SIC codes the State deems inappropriate for fuel card use;
 2. Entertainment expenditures (the State will work with the Contractor to determine which MCC codes are entertainment related);
 3. Cash advances from banks or automated teller machines;
 4. Other restrictions as determined by the State may be added to the contract as technology changes.
- d. Card Cancellation and Destruction
 1. The Contractor shall, upon notification by the State, immediately terminate fuel payment cards issued under this agreement. The State shall not be liable for any purchase or charge authorized after receipt of notice of termination or cancellation of a fuel card by the Contractor from the Contract Administrator.
 2. The State and the vehicle operator are not liable for charges resulting from any unauthorized use of the fuel payment card. For purposes of this paragraph, an unauthorized use is a use that did not benefit either the State or the authorized vehicle operator; this card is for official State use only.
 3. The Contractor will allow the State to destroy cards, in a manner mutually agreed upon, which fall into one or more of the following categories:
 - Damaged
 - Cancelled
 - Expired
 - Assigned to a decommissioned vehicle

A.5. Fuel Card Reporting and Invoicing

a. Technical Requirements

1. The Contractor shall provide a web-based program management and reporting system that is hosted by the Contractor, in the form of an Application Service Provider (ASP). The means of accessing the hosted reporting solution must be through a secure connection. In order for a connection to be deemed secure, each connection and/or connection method, and the associated security method employed, must adhere to the State's technical architecture.
2. The Contractor shall establish and maintain a standard format for all electronic records. Electronic access shall consist of two parts:
 - a. The Contractor shall provide and host a web-based system which will allow the State access to all existing account information including all transaction data.
 - b. The Contractor shall provide for availability of data in ASCII format that can be downloaded into software spreadsheets and SQL databases.
3. The Contractor shall ensure that the payment card services and/or applications provided under this contract are compliant with the Payment Card Industry Data Security Standards (PCIDSS). For details, please visit www.pcisecuritystandards.org.
4. The Contractor shall implement biannual third party security assessments (e.g. penetration tests, vulnerability scanning and reporting) to ensure that

the portal remains as secure as possible over time. The Contractor shall ensure that the results are delivered to the State in a timely fashion and that there is a secure mechanism for the delivery of the assessment reports. Full audit trails must be maintained throughout the entire transaction lifetime. A rigorous change management and configuration management process shall be designed to ensure security and availability.

b. Reporting Requirements

1. Contractor shall control access to its reporting solution by individual user-ids and passwords. The use of individual user-ids and passwords is a State required security standard.
2. The Contractor shall provide the State with a customized transaction data extract file for upload into the State's accounting system. This information is to be furnished on a weekly basis by electronic transfer in a manner acceptable to State net of all exemptible taxes. The data should be for transactions occurring on Monday through the following Sunday of each and every week. The data extract file will be compatible with the current State Information Architecture.
3. The Contractor will provide the highest level of data available (Level III Data) and a minimum of the following information in the electronic record supplied to the State each week:

<u>ITEM</u>	<u>MAXIMUM LENGTH</u>	<u>FORMAT</u>
Transaction Document Number	9	Alpha / Numeric
Date of Transaction	6	YYMMDD
Account number	TBD	Numeric
Vehicle License Number	6	Alpha / Numeric
Vehicle Odometer	7	999,999
Merchant Classification Code (MCC), Standard Industry Classifications (SIC), or Contractor-created standardized code acceptable to the State	3	Alpha / Numeric
Merchant Name	12	Alpha/Numeric
Merchant address (City and State)	14	Alpha/Numeric
Merchant Federal Identification Number	9	Numeric
Product Quantity	11	999,999,999
Product Amount (Amt. of Purchase without taxes)	10	999,999.99
Posting date	6	YYMMDD
Location Identifying Number	8	Alpha/Numeric
Cost Per Gallon	6	Numeric
County Number	2	Numeric
Fuel Grade	2	Numeric
Service Type	5	Alpha/Numeric
Sales Tax (if applicable)	5	Numeric
Line Item Detail(for non-fuel purchases) ¹	25	Alpha/Numeric
Discount Amount	5	Numeric

¹ Line Item Detail must include, at a minimum, reasonably complete descriptions, quantities, and units of measure.

Notwithstanding this requirement, the State recognizes that Level III Reporting will not be available 100% of the time from 100% of retailers. The Contractor is expected to make a good faith effort at collecting the required data elements.

4. The State requires a complete management reporting package as part of the web-based program management and reporting system. The reporting system should provide a capability for the State staff to query the system and create ad hoc reports as required, and to provide the ability to produce a series of standard reports, on a periodic basis and/or on demand. Standard reporting type formats included but are not limited to, items listed below. The State reserves the right to request report(s) on a monthly or quarterly basis.

Standard Report Formats:

- a. 1099 Reporting capability to meet Federal guidelines/requirements is required;
- b. Finance and Audit Reports designed for 1099 reporting;
- c. Agency Summary Report consisting of agency month-to-date and year-to-date summary data shall be directed to the Contract Administrator;
- d. Suspended Accounts Report provides summary data indicating suspended accounts, number of days past due and undisputed amounts past due;
- e. Master Activity Report tracks vendor sales to contract participants and consolidates fuel card activity of all contract participants;
- f. Contract Administrator Summary Report provides month-to-date and year-to-date summary data.
- g. Account Information Report intended for Contract Administrator providing fuel card custodian transaction detail information;
- h. Fuel card custodian Activity Reports lists all the fuel card custodian's activity intended for fuel card custodian's use;
- i. Merchant Category Detail Report lists all purchases made with each card, subtotaled by merchant category code. Information includes: Date of Transaction, Account Number, Vehicle License Number, Merchant Category Code, Merchant Name, Merchant Federal Identification Number, and Transaction Amount;
- j. Financial Summary Report serves as the official invoice, to be provided to the Contract Administrator. This monthly report provides summary information for the State.

c. Dispute Resolution

1. In order to access payment discounts, the Contractor will allow the State the option of payment of invoice in full. Once an invoicing discrepancy is identified, the Contractor and the State will resolve the dispute and credit adjustments will be made upon resolution.
2. The State reserves the right to reject acceptance of the electronic transfer of data if it contains "significant" pricing errors. This should be limited to situations where errors are global in nature and individual correction is not feasible. The Contractor must resubmit the data with correct prices before proceeding with the transfer for the next billing cycle. This will not affect the State's ability to receive prompt payment discounts as stated in section C.3.b. of this Contract and rebate calculations will not begin until the corrected file is received.

A.6. Customer Service

a. Toll Free Customer Service Number

1. The Contractor shall provide a 24-hour toll-free telephone help line to assist the State and its vehicle operator with the program and any problems. The help line is available at no billable cost to the State or its vehicle operators and it shall be available 24 hours a day, 7 days a week, 365 days a year. At minimum, the customer service line will provide instruction regarding:

- card usage;
- information regarding location of a fuel site;
- fraudulent usage reporting;
- reporting lost or stolen cards.

b. Customer Service Personnel

1. The Contractor shall provide program support services with a minimum of the following Core Team personnel:

- a. One Relationship Manager with a minimum of two (2) years of current experience in managing large card programs with outstanding interpersonal and communication skills. The Relationship Manager must have management responsibility for program quality and meeting time frames. He/she must have sufficient authority to act independently to resolve quality related issues at the program level. The Relationship Manager must maintain current knowledge of the program's status and be accessible to State program management.
- b. One Customer Service Representative with a minimum of one (1) year of current experience as a Customer Service Representative with excellent interpersonal and communication skills. The Customer Service representative is expected to be the lead role for the day-to-day operations and interactions that may occur between the State and the Contractor. Areas of knowledge should include, but not be limited to billing, card issuance, card controls, denials disputes, and reporting. This individual must be available in person or by phone during normal business hours.
- c. One Technical Solutions Representative with a minimum of one (1) year of current experience in the card industry. The technical solutions representative is expected to coordinate the successful resolution of technological issues that are encountered above and beyond day-to-day operations.

A.7. Implementation Plan. The Contractor shall provide a detailed Initial Contract Transition Plan at the start of the contract period to be agreed to in writing by the State and Contractor that must include at a minimum:

- a. Contractor's implementation team members.
- b. Timeline, tasks and responsible parties for issuing Fleet Payment Cards by the expected available use date of October 1, 2016.
- c. All customer support that will be provide during initial transition such as on-site visits, technical assistance, program documentation assistance, etc.
- d. Training plan for the Contractor's Web-Based Program Management and Reporting System for the following groups :
 - i) MVM Contract Administrator
 - ii) State MVM Program Staff
 - iii) State OFM Fiscal Staff
- e. The process, including sample documentation and file specifications, for establishing agency master accounts with their corresponding contact, hierarchy, SIC/MCC specifications and accounting code validation values
- f. The process, including sample documentation and file specifications, for establishing current vehicle operator accounts as well as future mass vehicle operator account setups

- A.8. Disaster Recovery. The contractor shall provide a disaster recovery plan to include an alternate processing arrangement that will have the State's system operational after a disaster, whether natural or man-made, within 24 hours. The disaster recovery plan must be approved in writing by the State.
- A.9. Internal Controls and Security. The contractor shall provide application and system security, including but not limited to the use of firewall hardware and software for data:
- a. In transit - provide secure, authenticated, two-way transactions to ensure confidential data is protected from unauthorized use, modification or destruction.
 - b. In storage - provide the ability to encrypt confidential data as well as segment and separate confidential data from public data to ensure that confidential data in databases from which public data is being extracted will not be compromised
 - c. Implementation - The contractor shall ensure the implementation of industry and card association standard security guidelines, protocols and procedures.
 - d. Fraud - The contractor shall provide a fraud detection system that will be used to identify potentially fraudulent transactions and the process to notify the State.
 - e. Audit - The contractor shall provide an audit trail of identifying security breaches.
 - f. Cooperation - The contractor shall cooperate with state officials and law enforcement agencies in case of security breaches involving criminal and/or no criminal activity.
 - g. Restrictions - The contractor shall provide a system-wide restriction that limits card use to Automotive Products only.
 - h. Options - The contractor shall provide the option to restrict purchases that can be placed on the card to purchases of fuel by type, grade, dollar amount, and volume
- A.10. Data - The contractor shall maintain data and transaction integrity and confidentiality in regards to:
- a. Data integrity - data and transaction integrity and confidentiality will be maintained
 - b. Data Reliability - sufficient detail and summary information will be maintained to ensure statutory and regulatory reporting and compliance responsibilities
 - c. Data Availability - data and network access continuity will be maintained, ensuring its availability for required business processes.
 - d. Data Backup - The Respondent shall provide backup storage and management of data at the vendor site
- A.11. Physical and Environmental Control - Contractor shall ensure physical and environmental control to prohibit users from accessing data or computer facilities unless such access was expressly approved by the State; and determine environmental control required to mitigate the risk of loss of resources
- a. Authentication - the Contract shall provide authentication services within the environment including multi-factor authentication services and/or physical authentication or biometrics utilized at facilities.
 - b. Audit - The Contractor shall implement date-time stamp and an audit trail for identifying all network security breaches and attempted breaches; implement penetration analysis and intrusion detection policies to ensure that the Portal remains as secure as possible over time.
 1. Full audit trails must be maintained throughout the entire transaction lifetime. A rigorous change management and configuration management process must be designed to ensure security and availability.
 - c. Security Assessment - The Contractor shall implement biannual third party security assessments (e.g. penetration tests, vulnerability scanning and reporting) to ensure that the portal remains as secure as possible over time. The Contractor shall ensure that the results are delivered to the State within 30 days of the assessment completion and for the delivery of the assessment reports.
- A.12. Fraud Security - The Contractor shall implement all necessary procedures to monitor, prevent, and identify fraudulent transactions associated with the Contractor-provided fuel cards, and shall alert the State to potential related issues. Such procedures and associated Contractor performance shall be subject to evaluation and acceptance by the State at any time during the contract period.
- a. The Contractor will provide fraudulent usage reporting through the customer service number, available 24 hours a day, 7 days a week, 365 days a year.
- A.13. App Availability - The contractor shall provide access to any available mobile applications at no additional cost to the State.

- A.14. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor’s industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State’s rights under this Section shall not prejudice the State’s rights to seek any other remedies available under this Contract or applicable law.

- A.15. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on September 1, 2016 (“Effective Date”) and extend for a period of sixty (60) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor 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 Contract exceed **Written Dollar Amount (\$Number)** (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The State shall compensate the Contractor for the actual payments that the Contractor has remitted to retailers for State purchases, and in a total amount not to exceed the Contract

Maximum Liability established in Section C.1.. Said payments shall be directly equal to the amount paid for purchases by use of authorized fuel card that can be appropriately reconciled. In NO event shall the Contractor add or the State pay processing fees of any kind whatsoever and compensation shall be additionally contingent upon the Contractor's satisfactory completion service defined in Contract Section A.

b. The Contractor shall remit to the State a Quarterly Retail Purchases Rebate for actual retail purchases of Automotive Products. The Contractor shall pay each Quarterly Retail Purchases Rebate in a lump sum no later than forty-five (45) days after the end of each quarter of the Contract Period. It is expressly understood and agreed that the obligation set forth in this section shall survive the termination of this Contract.

i. Rebate Rates— The Quarterly Retail Purchases Rebate shall be based upon the actual Aggregate Quarterly Retail Purchase Amount and the corresponding Rebate Rate as detailed in the following schedule:

Cost Item Description	Rebate Rate
Rebate Level 1: \$0.00 - \$1,249,999.99 Aggregate Quarterly Retail Purchase Amount	\$ %
Rebate Level 2 \$1,250,000.00 - \$2,499,999.99 Aggregate Quarterly Retail Purchase Amount	\$ %
Rebate Level 3 \$2,500,000.00 - \$3,749,999.99 Aggregate Quarterly Retail Purchase Amount	\$ %
Rebate Level 4 Greater Than or Equal to \$3,750,000.00 Aggregate Quarterly Retail Purchase Amount	\$ %

c. Rebate Calculation – The Contractor shall calculate each Quarterly Retail Purchases Rebate as follows:

- i. The Total Quarterly Retail Purchase Amount shall equal the sum of the total of all State of Tennessee retail purchases (excluding exempted taxes).
- ii. The applicable Rebate Rate shall correspond to the Rebate Level defined by the Quarterly Retail Purchase Amount in the schedule at section C.3.b. above.
- iii. The Quarterly Retail Purchases Rebate (payable to the State) shall equal the product of the actual amount of the State's total retail purchases during the subject quarter multiplied by the applicable Rebate Rate, as in the formula below:

$ \begin{array}{l} \textit{Total Quarterly Retail} \\ \textit{Purchases (by the State)} \end{array} \times \begin{array}{l} \textit{Applicable} \\ \textit{Rebate Rate} \end{array} = \begin{array}{l} \textit{Quarterly Retail Purchases} \\ \textit{Rebate (payable to the State)} \end{array} $

d. Prompt Payment Incentives

1. The Contractor will provide prompt payment incentives in the form of discounts to the retail cost of fuel purchases if payment in full is made within the schedule set forth in Section C.3.d. of this Contract.
2. Prompt Pay Calculation – The Contractor shall calculate each Prompt Pay Rebate as follows:

Rebate Percentage for Prompt Payment Incentives	Rebate Percentage
<u>Number of Days</u>	
5-10	%
11-15	%
16-20	%
21-29	%

i. Client Held Days are calculated by taking the sum of the daily accounts receivable balances for the rebate period divided by the total sales for the same rebate period inclusive of the beginning and end dates less fifteen (15) days.

ii. Client Held days must be forty-five (45) or less to earn any rebate.

iii. Prompt pay discount will be calculated in aggregate of all Automotive Products spend.

iv. Payments will be made to the State on a quarterly basis.

e. The State Quarterly periods to be every three (3) months beginning in January.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation in a searchable digital form (excel workbook unless otherwise required by the State), no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

State of Tennessee
 Department of General Services
 Motor Vehicle Management
 Davy Crockett Tower, 3rd Floor
 500 James Robertson Pkwy., Nashville, TN 37243
Ba.mvmap@tn.gov

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: Department of General Service, Motor Vehicle Management;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

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 other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

State of Tennessee
 Department of General Services
 Motor Vehicle Management
 Davy Crockett Tower, 3rd Floor
 500 James Robertson Pkwy., Nashville, TN 37243
 Bob.Williams@tn.gov

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
 Telephone # **Number**
 FAX # **Number**

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor 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 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 or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment 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. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, 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 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.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party 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 are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor 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. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- 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, 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.
- D.19. Hold Harmless. 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, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. 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, 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.

- D.20. HIPAA Compliance. The State and Contractor 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"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor 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. Contractor 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 Contractor 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 Contractor 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 the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor 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.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor 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 offense 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 Contractor 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.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force

Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, 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, whether written or oral.
- D.28. 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 of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [Attachment 1 - Attestation Re Personnel Used In Contract Performance Attachment 2 – Tennessee Enterprise Architecture Standards];
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to Respondents during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.

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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State

or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

E.3. Ownership of Software and Work Products.

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 solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party 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 granted under this Contract.
- (2) All right, title and interest in and to the Work Product, 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 Work Product, 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 Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. 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.
- (3) 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 granted under this Contract.

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.

E.4. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF GENERAL SERVICES:

ROBERT OGLESBY, COMMISSIONER

DATE

ATTACHMENT 1**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT 2

Place holder for Tennessee Enterprise Architecture Standards: reference RFP Section 1.11

ATTACHMENT 6.7**REQUEST FOR CONFIDENTIAL DOCUMENTS**

In order to receive the confidential documents described in the Solicitation, the State must receive a Notice of Intent to Propose (filed separately) and a signature on the attached Confidentiality Agreement by an officer of the prospective respondent who is authorized to bind the company.

CONFIDENTIALITY AGREEMENT

_____, a Prospective Respondent on a procurement with the State of Tennessee (hereinafter "Prospective Respondent"), will be provided with copies of the following documents for the purposes of preparing a response to this procurement.

1. Edison Business Partner Interfaces – Technical Quick Start Guide
2. Enterprise Technology Architecture Standard Products

In consideration for access to these documents, Prospective Respondent agrees as follows:

1. These documents are confidential and proprietary and are not public records of the State of Tennessee.
2. These documents, or copies thereof, will only be disclosed to authorized employees and contractors of Prospective Respondent who need access to them for the purpose of preparing a response to the procurement. All individuals entrusted with these documents, or the information contained therein, will be notified of the confidentiality restrictions.
3. Prospective Respondent will maintain reasonable security procedures to protect paper and electronic copies of these documents.
4. If Prospective Respondent chooses not to offer a response or if the response does not result in a contract with the State, the Prospective Respondent will destroy all copies of the documents within a reasonable time. If requested by the State, Prospective Respondent will certify in writing that the confidential documents were destroyed.
5. If Prospective Respondent enters into a contract with the State based on this procurement, this confidentiality agreement will expire upon signature of the contract, and the confidentiality provisions of the contract will control.
6. Prospective Respondent agrees that unauthorized release of the documents would cause such harm to the State that injunctive relief would be an appropriate remedy. If any court rules that Prospective Respondent has breached this confidentiality agreement, Prospective Respondent shall reimburse the State for its cost of litigation, including attorney's fees, as well as any damages awarded by the court.
7. This confidentiality agreement shall be interpreted under the laws of the State of Tennessee.

(signature)

(name of company)

Signature of this document constitutes certification that the person signing the document has the authority to bind the company.

for State of Tennessee