

DESIGNER REQUEST FOR QUALIFICATIONS (DRFQ)
SBC PROJECT NO.:529/000-01-2016
AMENDMENT # One
FOR Energy Consultant

DATE: March 23, 2016

DRFQ SBC Project No.: 529/000-01-2016 IS AMENDED AS FOLLOWS:

- 1. This RFQ Schedule of Events updates and confirms scheduled RFQ dates. Any event, time, or date containing revised or new text is highlighted.**

| EVENT | TIME (Central Time) | DATE | UPDATED / CONFIRMED |
|-----------------------------------------------------------|------------------------|------------|---------------------|
| 1 Post DRFQ to Website | | 03/03/2016 | CONFIRMED |
| 2 Pre-Response Conference | 9:30 A.M. | 03/10/2016 | CONFIRMED |
| 3 Written Question Deadline | 2:00 P.M. | 03/17/2016 | CONFIRMED |
| 4 STREAM Responds to Written Questions | | 03/23/2016 | CONFIRMED |
| 5 Proposal Deadline | 2:00 P.M. | 03/30/2016 | CONFIRMED |
| 6 Written Evaluations Complete | | 04/07/2016 | CONFIRMED |
| 7 Information Available to State Architect | | 04/15/2016 | CONFIRMED |
| 8 Executive Subcommittee of the State Building Commission | | 04/25/2016 | CONFIRMED |
| 9 Anticipated Agreement sent to Designer | | 04/27/2016 | CONFIRMED |
| 10 Anticipated Agreement Execution | | 05/18/2016 | CONFIRMED |

- 2. State responses to questions and comments in the table below amend and clarify this RFQ.**

Any restatement of DRFQ text in the Question/Comments column shall NOT be construed as a change in the actual wording of the DRFQ document.

| QUESTION / COMMENT | STATE RESPONSE |
|-----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 What waste to energy power project sites do you have in mind? (Name of Campus, Gross SF, Type of waste) | Waste energy power is one of many strategies the state is considering. Identifying opportunities may be part of this 3 year contract. |
| 2 What projects do you have funded? | Initial funding of \$150,000 covers current analysis and project development needs. This contract allows for additional funds to be added. Reference response #3. |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>3 Can you confirm that if the Energy Consultant Develops and/or Assists with the Pre-Design Analysis and Programming for a project, will they be disqualified from being selected as the Designer of Record for the SBC approved project.</p> | <p>The Energy Consultant will not be disqualified from proposing and being selected as the Designer of Record for projects where they performed project analysis and development.</p> |
| <p>4 The Scope of this consulting agreement is for "Various Facilities/Statewide." During pre-design analysis and programming phased for specific projects, will travel time from the consultant's office(s) to the project site(s) be a reimbursable expense in addition to the State travel compensation for travel, meals, and lodging?</p> | <p>Reference Section C.3 and C.4 of the attached amended contract.</p> |
| <p>5 A.4 Provide a statement of whether the firm, its consultants or any individual, who shall perform work under the contract, has a possible conflict of interest and, if so, the nature of that conflict. http://www.tn.gov/finance/OSA/documents/SBCPolicyMASTER.pdf</p> <p>This link is not valid. Can you provide the pdf file?</p> | <p>Please see updated link below. Link will take you to OSA website where SBC Policy can be downloaded.</p> <p>http://tn.gov/finance/article/fa-osa-policy-precudures</p> |
| <p>6 Some of the Professional Engineers on our team are licensed in State of Tennessee states and others are licensed in other States. Would it be acceptable to submit the Professional Engineer's License Numbers from the states of our engineers who are not licensed in Tennessee in the response to the RFQ along with their qualifications and wait until the Award of the Contract is given to apply to the Board of Architectural and Engineers Examiners in Tennessee for Professional Engineer's Registration by Comity?</p> | <p>No. We do not research engineers not licensed in Tennessee and during evaluation only consider those that are licensed within the State of Tennessee</p> <p>Therefore, any engineers that proposer's desire be considered during evaluations need to be licensed in Tennessee at the time of proposal.</p> |
| <p>7 Our team is comprised of companies in Georgia and California. Do we need a Business License in Tennessee to respond to the RFQ?</p> | <p>Yes, a business license in Tennessee is required to submit a response to this DRFQ. Information regarding licensing can be found at the link below.</p> <p>https://www.tn.gov/revenue/article/business-tax-registration-and-licensing</p> |
| <p>8 Comment regarding Item 2-1 (Basic Services) of SBC-6a 2-1-1 Dates of completion shall be extended for reasons mentioned plus for the reason of the Designer not getting necessary information for reasons beyond the control of the Designer. Example: An entity either owned or not owned by the State of Tennessee must supply information for the work to proceed and does not provide the information on a timely manner for reasons beyond the control of the Designer.</p> | <p>The SBC-6a, Terms and Conditions, is part of a Designer Agreement. The selected designer for this project is expected to sign the <i>Pro Forma</i> contract in place of the standard Designer Agreement</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| <p>9 Comment regarding Article 7 (Payment to the Designer for Basic Services) of SBC-6a</p> <p>7.1 Elaborate the process for invoicing tasks that are studies and do not follow the "Program Phase, Schematic Design Phase, Design Development Phase, ... " format.</p> | <p>See response to question #8 above.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|

3. The *Pro Forma* contract has been revised and is attached to this amendment.

The attached revised contract is the contract that the selected designer will be expected to sign upon selection.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
CONTRACTOR NAME
TO
SBC PROJECT NUMBER XXX/XXX-XX-XXXX

This Contract, by and between the State of Tennessee, Department of **General Services**, hereinafter referred to as the "State" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision of **Energy Consulting Services**, as further defined in the "SCOPE OF SERVICES."

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 OF SERVICES:

- A.1 The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by the Contract.
- A.2 The Contractor shall provide such professional advice and assistance as the State may request regarding the design, alteration, improvements, planning, repairs and maintenance, including, but not limited to, site visitation and investigation, analyses, design, specification development, cost engineering, and construction and/or repair observations for various State projects. The Contractor shall perform thermal and energy system analysis and design, and may be the Designer of Record as selected by the State Building Commission for the development of project specific design and construction documents for various energy conservation projects. Such work done by a Contractor shall be approved in writing by the State prior to the start of the work.
- A.3. The State shall make the requests described in A.2 through task orders ("Task Orders").
- A.4. The services, deliverables, technical specifications, and delivery requirements that the Contractor must provide and meet (sufficient detail is required to ensure Contractor accountability and definitive results) are attached hereto as Schedule I.

B. CONTRACT PERIOD:

- B.1 Contract Period. This Contract shall be effective for the period commencing on the date of full and complete execution of this Contract, and ending on **May 31, 2019**. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2 Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total Contract term of no more than five (5) years, provided that such an extension the Contract term is effected prior to the current Contract expiration date by means of a Contract Amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be affected through Contract Amendment, and shall be based upon payment rates provided in the original Contract.
- B.3 In Process Work Term Extension. The State reserves the right to extend this Contract for a period beginning at the end of the final term for the purpose of completing all work order activities associated with any authorized work initiated during the term(s) of this Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1 Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)**. The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, hours worked, materials or equipment required. The Contract Amount includes, but is not limited to, all applicable taxes, fees, overheads,

and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2 Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3 Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, increments of service, or other authorized work, as defined in section A.
- b. The Contractor shall be compensated for said units, milestones, increments of service, or other authorized work based upon the following rates:

| Service Description | Amount (per compensable increment) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Compensate the principals of the Contractor for services as described in Section A | An amount not to exceed \$155.00 per hour |
| Compensate the Contractor for his employees' time for services as described in Section A | A multiple of two and forty-five one-hundredths (2.45) times the employee's direct personnel expense to include cost of salaries and mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions, and similar benefits not to exceed \$155.00 per hour |
| Reimburse the Contractor for the services of his Contractor, if required, and as described in Section A | A multiple of one and twenty one-hundredths (1.20) time the amount billed to the Contractor provided such services are approved in writing, in advance, by the State |
| Reimburse the Contractor the actual verified cost of reproduction of drawings and specifications, computer services, renderings and models and special supplies ordered by the State. Procurements shall be made on a competitive basis, when practical | Actual verified costs |
| Reimburse the Contractor for the services of third party Contractors for services as described in Section A. | A multiple of one and twenty one hundredths (1.20) times the amount billed to the Contractor provided such services are competitively bid and approved in writing, in advance, by the State. |

c. For the purpose of this Contract, the Principal is: **Name of Principal**

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

C.5 Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Original: **Ron Maupin**
Department of Finance and Administration
Office of Business and Finance
312 Rosa L. Parks Avenue
W. R. Snodgrass Tennessee Tower, 20th Floor
Nashville, Tennessee 37243-1102

Copy: **State Contact Name & Title**
State Agency Name
Address
City, State Zip
Email Address
Telephone # Number
FAX # Number

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the contractor);
- (2) Invoice Date;
- (3) Contract Number SBC Project No. **XXX/XXX-XX-XXXX**
- (4) Customer Account Name: **Department of General Services, Real Estate Asset Management;**
- (5) Customer Account Number (assigned by the Contractor to the above-referenced State Agency);
- (6) Contractor Name;
- (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
- (9) Contractor Remittance Address;
- (10) Description of Delivered Service;
- (11) Total Amount Due for delivered service (as stipulated in Section C.3. above);
- (12) Further, the monthly invoices will include the name of each individual, the individual's job title, the number of hours worked during the period, the hourly rate, the total compensation requested for the individual, the total amount due the Contractor for the period involved, each project expenditure to-date, total expenditures to date and balance of funds remaining in the contract.

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice 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 matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7 Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of the Contract, not to constitute proper remuneration for compensable services.
- 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, which 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 documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1 Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by the appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to the **Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Office of the Attorney General**).
- D.2 Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the **Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Office of the Attorney General**).
- D.3 Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. 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.4 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 fair compensation for completed services. 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.5 Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest", "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6 Conflicts of Interest. The Contractor warrants that no part of the total Contract 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 Contractor to the Contractor in connection with any work contemplated or performed relative to 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 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 months has been, an employee of the State of Tennessee.

The Contractor acknowledges, understands, and agrees that it and its performance under this Contract are subject to State Building Commission Policy and Procedure 12.02, "Organizational Conflicts of Interest," (the "SBC Conflict Policy"), and that Contractor has read and understands all of the provisions and requirements of same.

D.7 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, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8 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 Exhibit A, hereto, with each invoice, as described in C.3, during the period of this Contract. 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.9 Licensure. The Contractor and its employees and all sub-contractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

D.10 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.11 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.12 Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.13 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.14 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State of Tennessee, agrees to provide insurance coverage as required by construction services agreement with a guaranteed maximum price.

D.15 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.16 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. 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.17 State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18 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.19 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.20 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of 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, these special terms and conditions shall control.
- E.2 Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address set forth below or to that of such party of address, as may be hereafter specified by written notice.

The State:

Carole Burgess, Energy Engineer
Department of General Services, Real Estate Asset Management
312 Rosa L. Parks Avenue, 24th Floor
William R. Snodgrass Tennessee Tower
Nashville, Tennessee 37243
Carole.Burgess@tn.gov
Telephone # (615) 260-8133

The Contractor:

Contractor Name & Title Firm Name
Address
City, State Zip

Contractor Legal Entity Name
SBC Project #: XXX/XXX-XX-XXXX

Email Address

Telephone # **Number**

FAX # **Number**

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

- E.3 **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4 **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.
- E.5 **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.
- E.6 **Insurance.** Specific lines of coverage and limits of liability provided by Contractor shall be written in a comprehensive form, satisfactory to State in the following minimum requirements:
- a. **Comprehensive General Liability, including:**
Premises / Operations; Underground / Explosion / Collapse; Products / Completed Operations; Contractual; Independent Contractors; State / Contractor Protective; Broad Form Property Damage; Personal Injury (Employment Exclusion deleted).

Combined single limits for bodily injury and property damage:
Each Occurrence: \$1,000,000
Aggregate: \$2,000,000

Products and Completed Operations to be maintained for one year after final payment.
 - b. **Comprehensive Automobile Liability:**

Including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.

Bodily injury and property damage combined single limits:
Each Occurrence: \$500,000
 - c. **Workers Compensation and Employer's Liability:**
(without restriction as to whether covered by Workmen's Compensation law):
Workers Compensation: according to statute
Employer's Liability: \$100,000
 - d. **Certificate of Insurance:** Contractor shall maintain insurance coverage evidenced by Certificate of Insurance. Failure to provide evidence of such insurance coverage is a

material breach and grounds for termination of the contract negotiations. Any insurance required by the State shall be in form and substance acceptable to the State.

Certificates shall name insured, producer, carrier(s), and the "State of Tennessee" as certificate holder, with the correct address of the State.

The Certificate shall stipulate ten (10) days prior written notice to certificate holder in the event coverage is changed or renewed.

If the Insured is a Joint Venture, the certificate shall recognize the Joint Venture relationship, and the limit of liability for each member of the Joint Venture shall be not less than the required total limit divided by the number of members (firms).

Values of all limits and deductibles shall be given in like units.

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This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart, even though no one (1) counterpart contains the signatures of all parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF:

CONTRACTOR LEGAL ENTITY NAME:

Contractor Signatory, Contractor Title

DATE: _____

STATE OF TENNESSEE,

OFFICE OF THE STATE ARCHITECT:

Peter L. Heimbach, Jr., State Architect

DATE: _____

DEPARTMENT OF GENERAL SERVICES:

Robert E. Oglesby, Commissioner

DATE: _____

APPROVED AS TO COMPLIANCE WITH POLICY AND STATUTE:

Justin P. Wilson, Comptroller of the Treasury

DATE: _____

APPROVED AS TO COMPLIANCE WITH FORM AND LEGALITY:

Herbert H. Slatery III, Attorney General and Reporter

DATE: _____

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|-------------------------------------------------------------------------------|--|
| SUBJECT CONTRACT NUMBER: | |
| CONTRACTOR LEGAL ENTITY NAME: | |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security 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. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

Task Order Procedures

1) Task Order Parameters

All work shall be assigned to the Contractor in the form of a "Task Order Authorization". A Task Order Authorization will be issued for a specific scope of work. It is the intent of this Contract that no individual Task Order shall exceed the Maximum Liability of the Contract. As used herein "Work" means any work to be performed pursuant to a Task Order Authorization.

2) Task Order Issue

The State will issue a request for proposal to the Contractor on the form identified as "Task Order Request for Proposal Form". The State or its designated representative may choose to visit the proposed work location with the Contractor to define the Task Order scope of work prior to issuance of the Word Order Request for Proposal Form for such work.

3) Task Order Procedures

When the State requires work under this Contract, the State will request a price from the Contractor for a "one job, not to exceed, lump sum, " Task Order. The following procedures shall be used for such orders:

- a) The State will provide to the Contractor a Task Order Request for Proposal with attachments describing the work to be performed, which may include special instructions and conditions, and an information submittal register. The Contractor shall not be reimbursed for any costs, unless pre-approved, including proposal preparation and attendance during negotiations, prior to the execution of the Task Order. Contractor shall submit proposal containing full detailed scope of work with lump sum, not to exceed, pricing. The State will review the Contractor's proposal and either request revisions or approve the proposal. Once the proposal has been approved and by State and Contractor, a "Task Order Authorization" will be executed and the State will issue a Notice to Proceed ("NTP").
- b) The Contractor shall respond to a Task Order Request for Proposal within fourteen (14) calendar days and may visit the proposed site in the company of the Contract Administrator or other representative(s) of the State, if necessary. The purpose of this site visit will be to establish a clear understanding between the Contractor and the State of what work is required in the Task Order. On-site changes may be made to the Task Order Request for Proposal or drawings if the Contractor or the State's representative identify items of work that have been left out or for any other reason which remains inside the scope of the project. Any questions surrounding the proposed Task Order Request for Proposal shall be submitted within five (5) calendar days of receipt of the request. The State will respond to questions and provide clarification within five (5) calendar days of receipt.
- c) Should the Contractor refuse to perform requested work, the State has the right to terminate the Contract in its entirety, or to enter into an agreement with a third party to perform such work which action by the State shall not be a waiver of its right to terminate the Contract, or to seek any other remedy allowed by law or at equity.
- d) The Contractor's Task Order Proposal shall be submitted within ten (10) calendar days of the site visit, or if no site visit occurs within fourteen (14) calendar days of receipt by Contractor of the Task Order Request for Proposal, which Contractor's proposal, shall be supported by necessary documentation to indicate that Contractor has engaged in sufficient planning to indicate an understanding of the Work and an ability to perform. At a minimum the Contractor's proposal package for each Task Order shall include a cost estimate based upon hourly rates as approved in the Contract.
- e) Upon receipt of the Contractor's proposal, the State will review the proposal for completeness. The State will negotiate and approve or reject all scope of work items, quantities, and performance times with the Contractor within fourteen (14) calendar days of receipt of the proposal.

5) Commencement and Completion of Work

- a) Contractor shall be required to commence a Task Order at the time specified in the NTP, and complete the entire work within the performance time specified in the Task Order Authorization.
- b) For each individual Task Order Authorization the Contractor shall provide progress schedules and status reports as required by the Task Order Authorization, or as directed by the Contract Administrator.

SCHEDULE I

- (1) Work Schedule: The Contractor shall prepare and submit progress schedules that show the total work schedule broken into individual items of work. The schedule shall show the percentage of completion at the close of each reporting period. This percentage shall be based on percentage of physical completion of the work. If applicable, the work schedule shall be submitted within seven (7) calendar days after the date of receipt of NTP for each individual Task Order Authorization.
- (2) Status Reports: The Contractor shall prepare and submit monthly project status reports for each outstanding Task Order Authorization. If applicable, the report shall be provided to the Contract Administrator on the first working day of each month. The report shall tell whether the project as a whole is on, ahead of, or behind schedule. If the project is behind schedule, the Contractor shall explain what actions will be taken to regain the schedule and provide an amended schedule. The report shall include a description of problem areas, delaying factors and their impacts and an explanation or corrective actions taken or proposed. Any events that occurred during the report month shall also be detailed. Costs for development/providing progress schedules, progress reports and status reports shall be reimbursed for actual verified costs.
- c) The "Task Order Authorization Time" is the period between NTP and the time all work under the Task Order Authorization is complete. Task Order Authorization Time will be negotiated for each Task Order Authorization prior to execution.

6) Design/Data Gathering Requirements

All design and data gathering performed under this Contract shall comply with the latest related American Society for Testing and Materials ("ASTM") standards, American Society of Heating, Refrigerating and Air Conditioning Engineers ("ASHRAE"), Building Commission Association ("BCA"), International Performance Measurement and Verification Protocol ("IPMVP") standards or related industry standards specific to the Task Order to be performed.

7) Preliminary Cost Estimates

At times requested by the State, the Contractor shall be required to submit preliminary cost estimates based on State identified work requirements. Such estimates shall be of sufficient detail and accuracy to establish budgetary limits for the considered work. Costs to prepare and submit these initial preliminary services and shall be billed at an hourly rate. Payment of such services shall be made by the State only in cases where the work does not proceed. If work proceeds, the cost of preparing and submitting such estimate shall be assumed by the Contractor and not billed to State.

8) Required Communications Equipment

Contractor shall maintain voice and data service at each office housing Contractor's personnel involved with the Contract. Contractor's Project Manager and other supervisory staff involved with an ongoing Task Order shall be equipped with mobile telephone and data service when away from their office station.

9) Staffing

a) Contractor Staff

The Contractor shall maintain adequate personnel resources necessary to successfully manage staff and perform the work of this contract. Contractor staff shall provide a quick response, and shall possess the ability to manage multiple projects, and effectively utilize subcontractors. Inability to provide adequate staff may constitute a Contractor's refusal to perform the Work.

b) Subcontractor Staff

Subcontractors utilized shall meet all appropriate licensing requirements, and shall be appropriately skilled to perform the required work.

(End of Task Order Procedures)

**TASK ORDER
REQUEST FOR PROPOSAL FORM**

STATE
State of Tennessee,
Dept. of General Services

PROJECT
Energy Consulting Services Master Contract
SBC Project No. **XXX/XXX-XX-XXXX**

CONTRACTOR
(Name)
(Address)

TASK ORDER
(Title)
(Location)
Task Order No. (#)

DESCRIPTION: *(Brief description of Task Order)*

1. Submission of a Response to this Task Order Request for Proposal constitutes acknowledgement that Contractor has received, read, and understands the Request for Proposal and related project documents; and, if applicable, has visited the site and become familiar with local conditions under which work is to be performed, has correlated observations with requirements of documents which pertain to this work, and submits a Response in accordance therewith.
2. A Response to this Task Order Request for Proposal constitutes an offer open and irrevocable for a period of thirty (30) days following the date of the Contractor's signed submission, and that upon acceptance by the State shall become binding under the terms of the Master Contract.
3. Work performed in response to this request shall be commenced on a date to be stipulated in the Task Authorization, when issued; and shall be completed no later than *(Number of days)* from the date of commencement, subject to authorized adjustments.
4. The response to this Task Order Request for Proposal shall include a not to exceed budget for performing the proposed work, such budget shall include all estimated reimbursable expenses and any other costs associated with the performance of the work by Contractor.

This request for proposal is submitted by:

Project Manager: _____

Phone: _____

E-Mail: _____

Date: _____

TASK ORDER AUTHORIZATION FORM

STATE
 State of Tennessee,
 Dept. of General Services

PROJECT
 Energy Consulting Services Master Contract
 SBC Project No. XXX/XXX-XX-XXXX

CONTRACTOR
 (Name)
 (Address)

TASK ORDER
 (Title)
 (Location)
 Task Order No. (#)

1. Please consider this Task Order Authorization as your notice to proceed with the work set forth in the Cost Proposal (the "Authorized Work"), which has been attached hereto and shall be considered a part of this Task Order Authorization. This Task Order Authorization is issued pursuant to the terms of the Master Contract. If not specifically specified in the Cost Proposal, you are hereby authorized to make site visits and perform any other services necessary or desirable to allow you to complete the Authorized Work.
2. The approved budget for the Authorized Work is **Amount in Words** and no/100ths Dollars, (**\$Number**). This is a "Not to Exceed" budget and includes amounts for all reimbursable expenses (as defined in the Master Contract) that may be payable in connection with the completion of the Authorized Work. No amounts will be paid by the State in connection with the Authorized Work unless such sums have been previously approved in writing by the State. Services requested under this Task Authorization shall be complete by no later than **Days in Words (Number)** calendar days from the date of commencement, subject to authorized adjustments as stipulated in the Task Order Authorization.
3. Please reference the State Building Commission **XXX/XXX-XX-XXXX**, the Task Order Number and the Task Order Title and Location on all correspondence and invoicing related to this Task Order Authorization. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

ACCEPTANCE BY STATE:

This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart, even though no one (1) counterpart contains the signatures of all parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures. This Task Order Authorization is hereby accepted and the Contractor is bound to perform the Work as described in this agreement when executed by the undersigned.

Task Order Administrator: _____

Contract Administrator Approval: _____

THIS AGREEMENT entered into this date _____