



**STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE**

**SOLICITATION # 33501-192547**

**FOR BUILDING AND/OR ELECTRICAL PERMITS ISSUE AGENTS**

**1. INTRODUCTION**

The State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as “the State,” has issued this Solicitation with the intent of awarding contracts to provide issuance of building and/or electrical permits in accordance with Tenn. Comp. R. Regs. 0780-02-01 and 0780-02-23.

**2. SCOPE OF SERVICE, CONTRACT PERIOD, TERMS AND CONDITIONS**

The *Pro Forma* Contract attached to this Solicitation (Attachment D) represents the contract document that the contractor selected by the state must sign. It specifically 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).

**3. PROCUREMENT SCHEDULE**

The following schedule represents the State’s best estimates for this procurement, however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or to cancel or reissue a similar solicitation.

<b>EVENT</b>	<b>DATE</b>
1. Solicitation Issued	July 2, 2018
2. Solicitation Deadline	May 30, 2019
3. State Completion of Application Evaluation	Within 7 days receipt of the required documentation
4. State sends contract to Contractor for signature	Once evaluated, approved and awarded
5. Contractor Signature Deadline	Within 7 days receipt of the contract
6. Contract Start Date	Once approved by the Commissioner and Office of the Comptroller

**4. RESPONSE REQUIREMENTS**

- 4.1. An offer in response to this solicitation must respond only as required by this solicitation document.

The State may determine an offer to be non-responsive and ineligible for contract award if it fails to address all items, organize and properly reference the *Qualifications Evidence Guide*.

- 4.2. **Qualifications Evidence** – The *Qualifications Evidence Guide* (Attachment A) details specific mandatory requirements for an offer in response to this solicitation. An Offeror must use Attachment A, completed with relevant proposal page numbers, to cover (as a table of contents), organize, reference, and complete the *Qualifications Evidence* portion of the solicitation response.
- 4.3. **Offer Prohibitions.** An offer in response to this solicitation MUST **NOT**:
- include the Offeror’s own contract terms and conditions;
  - restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this Solicitation;
  - include, for consideration in this procurement process or subsequent contract negotiations, incorrect information that the Offeror knew or should have known was materially incorrect.
- 4.4. **Offer Delivery.** A potential Issue Agent must deliver to the state ALL documentation required for the *Qualifications Evidence* in response to this Solicitation. It must be delivered to:

Laura Hartsfield, Assistant General Counsel  
Department of Commerce and Insurance  
Davy Crockett Tower, Legal Division  
500 James Robertson Parkway  
Nashville, Tennessee 37243

## 5. OFFER REVIEW & CONTRACT AWARD

The Qualifications Evidence Guide and Statement of Certifications and Assurances submitted will be evaluated. For an offer to be acceptable and eligible for contract award, it must be determined that the Qualifications Evidence documents indicate that the Offeror meets the minimum requirements specified by this solicitation and is, at least, minimally acceptable as a contractor for the subject services.

## 6. GENERAL INFORMATION & REQUIREMENTS

- 6.1. **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 solicitation or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion (subject to Tennessee Code Annotated, Sections 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- 6.2. **Communications.** Reference Solicitation # 33501-192547, in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator.

Laura Hartsfield, Assistant General Counsel  
Department of Commerce and Insurance  
500 James Robertson Parkway  
Nashville, Tennessee 37243  
Email: [ci.procurement@tn.gov](mailto:ci.procurement@tn.gov)  
Phone: (615) 532-6308

**Unauthorized contact about this solicitation with other employees or officials of the State of Tennessee may result in disqualification from consideration as a contractor.**

Notwithstanding the foregoing, potential responders may also contact the following as appropriate:

- staff of the Governor’s Office of Diversity Business Enterprise for assistance available to minority-owned, women-owned, and small businesses as well as general, public information relating to this solicitation; and

- 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:

Maliaka Bass, Deputy General Counsel, General Civil Division  
Department of Commerce and Insurance  
500 James Robertson Parkway  
Nashville, Tennessee 37243  
Email: maliaka.bass@tn.gov  
Telephone: (615) 741-9730  
Fax: (615) 741-4000

6.3. **Conflict of Interest.** The state shall not consider an offer from, and this solicitation shall not result in a contract with:

- an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this solicitation;
- a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than two percent (2%) of the total outstanding amount of the stocks or bonds of the issuing entity);
- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
- any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this solicitation or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage).

For these purposes, the state will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.

6.4. **Disclosure of Proposal Contents.** All materials submitted to the state in response to this solicitation become the property of the state of Tennessee. Selection for award does not affect this right. Upon completion of evaluations, indicated by the award notification (refer to section 3, above), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting an offer, a potential contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.

6.5. Before the Contract resulting from this Solicitation is signed, the apparent successful Offeror **must be registered with the Department of Revenue for the collection of Tennessee sales and use tax or exempt from such registration.** The State shall not approve a contract unless the **Offeror provides proof of such registration or proof of exemption.** The foregoing is a mandatory requirement of an award of a contract pursuant to this Solicitation.

**QUALIFICATIONS EVIDENCE GUIDE**

The offer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references).

In addition to the items below, the State will review each offer for compliance with all solicitation requirements, including but not limited to:

- The Offer must be delivered to the State no later than the Offer Deadline.
- The *Qualifications Evidence* must be submitted as required.
- The offer must NOT contain any qualification, limitation, or other restrictions.

<u>Reference</u>	<u>Item</u>	<u>Signature</u> – By signing in this column, the Offeror is indicating affirmatively to the respective Item or acknowledging that required information has been attached or otherwise included
A.1.	<p><b>Offeror Legal Entity Name:</b></p> <p>_____</p> <p><b>Name of Contact person:</b></p> <p>_____</p> <p><b>E-mail Address:</b></p> <p>_____</p> <p><b>Mailing Address:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p><b>Telephone Number:</b></p> <p>_____</p>	<p>Signature: _____</p>
A.2.	<p>The Offeror has included Solicitation Attachment B, <i>Statement of Certifications and Assurances</i> completed and signed by an individual empowered to bind the Offeror to the provisions of this solicitation and any resulting contract. The document must be signed without exception or qualification.</p>	<p>Signature: _____</p>

<p><b>A.3.</b></p>	<p>Neither the Offeror nor any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee, relation by blood or marriage, or financially associated with any official of the Department of Commerce and Insurance).  If there is a possible conflict of interest, an explanation has been included below.  <i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any offer or cancel any award.</i></p>	<p>Signature: _____</p>
<p><i>Explanation:</i></p>		
<p><b>A.4.</b></p>	<p>Neither the Offeror nor, to the Offeror's knowledge, any of the Offeror's employees, agents to provide work on a contract pursuant to this solicitation, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If there has been any such conviction or plea, an explanation has been included below.  <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any offer or cancel any award.</i></p>	<p>Signature: _____</p>
<p><i>Explanation:</i></p>		
<p><b>A.5.</b></p>	<p>There is not any material, pending litigation that the Offeror should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this solicitation or is likely to have a material adverse effect on the Offeror's financial condition. If such exists, list each separately below, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Offeror's performance in a contract pursuant to this solicitation.  <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any offer or cancel any award.</i></p>	<p>Signature: _____</p>
<p><i>Explanation:</i></p>		

<p><b>A.6.</b></p>	<p>The Offeror's place of business is located in Tennessee or a state contiguous to Tennessee so that services provided hereunder are made available to citizens of the State of Tennessee;</p>	<p><i>Signature:</i> _____</p>
<p><b>A.7.</b></p>	<p>The Offeror nor, to the Offeror's knowledge, any of the Offeror's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this solicitation, are at least 18 years of age.</p>	<p><i>Signature:</i> _____</p>
<p><b>A.8.</b></p>	<p>Upon receipt of the appropriate fee, the Procuring Party shall issue electrical and/or building permits to qualified individuals as set forth in Tenn. Comp. R. &amp; Regs. 0780-02-01 and 0780-02-23.</p>	<p><i>Signature:</i> _____</p>
<p><b>A.9.</b></p>	<p>The Procuring Party shall receive, make proper disposition, and account for all monies collected for electrical and/or building permits issued as directed by the State.</p>	<p><i>Signature:</i> _____</p>
<p><b>A.10.</b></p>	<p>The Procuring Party acknowledges that all fees collected from the sale of the permits, except additional agent fees for electrical permits and building permits, are State funds and, until remittance, shall be held in trust for the State.</p>	<p><i>Signature:</i> _____</p>
	<p><i>Explanation:</i></p>	
<p><b>A.11.</b></p>	<p>The Offeror has and will maintain a telephone with the capability for voice mail, and an email for the purpose of data transmission.</p>	<p><i>Signature:</i> _____</p>
<p><b>A.12</b></p>	<p>For an Electrical and/or Building Permit Issuing Agent, the Procuring Party agrees by signing the contract that the Procuring Party is not an electrical/building inspector employed by Federal, State, Local Government or private industry, or an immediate family member of an electrical/building inspector.</p>	

**STATEMENT OF CERTIFICATIONS AND ASSURANCES**

An individual legally empowered to contractually bind the Offeror must complete and sign the *Statement of Certifications and Assurances* below as required, and this signed statement must be included with the offer as required by the Solicitation Attachment A.

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

1. The Offeror will comply with all of the provisions and requirements of the solicitation.
2. The Offeror will provide, for the total contract period, all services defined in the Scope of Services specified by the *Pro Forma Contract* attached to the solicitation.
3. The Offeror accepts and agrees, without qualification, to all terms and conditions set out by the *Pro Forma Contract* attached to the solicitation.
4. The Offeror acknowledges and agrees that a contract resulting from the solicitation shall incorporate, by reference, the offer in response to the solicitation as a part of the contract.
5. The Offeror will comply, as applicable, 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 offer in response to the solicitation is accurate.
7. The offer submitted in response to the solicitation 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 Offeror in connection with the solicitation or any resulting contract.

*By signature below, the signatory certifies legal authority to bind the proposing entity to the provisions of this solicitation and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to legally bind the proposing entity.*

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE INDIVIDUAL OR ENTITY MAKING AN OFFER IN RESPONSE TO THE SUBJECT SOLICITATION**

**SIGNATURE & DATE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**LEGAL ENTITY NAME:**

\_\_\_\_\_

**FEIN or SSN:**

\_\_\_\_\_

***Electrical and/or Building Permit Issue Agent Applications***

On the following pages of Attachment C you will find an Application for Electrical Permit Issue Agents and an Application for Building Permit Issue Agents. Complete one or both Applications depending on which permits you propose to issue for the state of Tennessee.



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
DIVISION OF FIRE PREVENTION  
CONTRACT INSPECTION SERVICES SECTION  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243  
Phone (615) 741-7170  
Fax (615) 253-4895

**APPLICATION  
FOR  
ELECTRICAL PERMIT ISSUE AGENT**

**Name:** (Company/Organization Name if Applicable) \_\_\_\_\_

**Type of Business/Organization** (if applicable)

**Mail Address:**

\_\_\_\_\_  
\_\_\_\_\_

**Business Address:** (Address where Permits will be issued)

\_\_\_\_\_  
\_\_\_\_\_

**Email Address:**

\_\_\_\_\_

**TN Sales Tax Number**

\_\_\_\_\_

**Federal ID Number**

\_\_\_\_\_

**Social Security Number** (Required if Individual) \_\_\_\_\_

**The potential issue agent certifies by signing this application that:**

- the potential issue agent's place of business is located in Tennessee or a state contiguous to Tennessee in order to provide his or her services to the citizens of the state of Tennessee; and
- the potential issue agent is not a convicted felon; and
- the potential issue agent is not an electrical inspector approved by the state or employed by federal, state, or local government, or private industry; and
- the potential issue agent is at least eighteen (18) years of age; **or**
- the potential issue agent is a governmental entity or an electrical cooperative.

I/We hereby make application to be appointed an Electrical Permit Issue Agent with the State of Tennessee, Department of Commerce and Insurance.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
DIVISION OF FIRE PREVENTION  
500 JAMES ROBERTSON  
PARKWAY NASHVILLE,  
TENNESSEE 37243  
Phone (615) 741-1270

**APPLICATION  
FOR  
RESIDENTIAL BUILDING PERMIT ISSUE AGENT**

**Name:** (Company/Organization Name if Applicable) \_\_\_\_\_

**Type of Business/Organization** (if applicable)

**Mail Address:**

\_\_\_\_\_  
\_\_\_\_\_

**Business Address:** (Address where Permits will be issued)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Email Address:**

\_\_\_\_\_

**TN Sales Tax Number**

\_\_\_\_\_

**Federal ID Number**

\_\_\_\_\_

**Social Security Number** (Required if Individual) \_\_\_\_\_

**The potential issue agent certifies by signing this application that:**

- the potential issue agent's place of business is located in Tennessee or a state contiguous to Tennessee in order to provide his or her services to the citizens of the state of Tennessee; and
- the potential issue agent is not a convicted felon; and
- the potential issue agent is not a state deputy building inspector or an immediate family member of a state deputy building inspector; and
- the potential issue agent is not related to or financially associated with any official of the Tennessee Department of Commerce and Insurance (or has received prior approval of the Department to apply); and
- the potential issue agent is at least eighteen (18) years of age; **or**
- the potential issue agent is a governmental entity or an electrical cooperative.

I/We hereby make application to be appointed an Residential Building Permit Issue Agent with the State of Tennessee, Department of Commerce and Insurance.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***PRO FORMA CONTRACT***

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters).

**The *pro forma* contract is not submitted at this time.**

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF COMMERCE AND INSURANCE**  
**AND**  
**PROCURING PARTY NAME**

This Contract, by and between the State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as the "State" and **Procuring Party Legal Entity Name**, hereinafter referred to as the "Procuring Party," is for the provision of issuance of state electrical and/or building permits, as further defined in the "SCOPE OF SERVICES."

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

Procuring Party Place of Incorporation or Organization: **Location**

**A. SCOPE OF SERVICES:**

- A.1. Upon receipt of the appropriate fee, the Procuring Party shall issue electrical and/or building permits to qualified individuals as set forth in Tenn. Comp. R. & Regs. 0780-02-01 and 0780-02-23.
- A.2. The Procuring Party shall receive, make proper disposition, and account for all monies collected for electrical and/or building permits issued as directed by the State.
- A.3. The Procuring Party acknowledges that all fees collected from the sale of the permits for electrical permits and building permits, except additional agent fees, are State funds and, until remittance, shall be held in trust for the State.
- A.4. Upon termination of the Contract, the Procuring Party shall immediately return any and all State materials entrusted to it by the Department of Commerce and Insurance.
- A.5. The Procuring Party agrees to maintain compliance with the following standards:
- a. The Procuring Party's place of business is located in Tennessee or a state contiguous to Tennessee so that services provided hereunder are made available to citizens of the State of Tennessee;
  - b. The Procuring Party is not a convicted felon;
  - c. The Procuring Party is at least 18 years of age; and,
  - d. In accordance with Tenn. Comp. R. & Regs. 0780-02-01-.18(2) and 0780-02-23-.13(2), the Procuring Party is not related by blood or marriage, or financially associated with, any official of the Department of Commerce and Insurance.
- A.6. For an Electrical Permit Issuing Agent, the Procuring Party agrees by signing the contract that the Procuring Party is not an electrical inspector employed by Federal, State, Local Government or private industry, or an immediate family member of an electrical inspector.
- A.7. For a Building Permit Issuing Agent, the Procuring Party agrees by signing the contract, that the Procuring Party is not a State deputy building inspector or an immediate family member of a State deputy building inspector.

**B. TERM OF CONTRACT:**

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

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. The Procuring Party shall collect a fee per permit issued with the amount set by corresponding Tenn. Comp. R. & Regs. 0780-02-01 and Tenn. Comp. R. & Regs. 0780-02-23.

- C.2. The Procuring Party may charge an additional agent fee not to exceed five dollars (\$5.00) per electrical permit and not to exceed fifteen dollars (\$15.00) per building permit pursuant to Tenn. Comp. R. & Regs. 0780-02-01-.05 and 0780-02-23-.05.
- C.3. The Procuring Party shall submit to the State, on a weekly basis, reports of permits issued. The Procuring Party shall also remit all of the corresponding fees collected for such issued permits to the State on a weekly basis. Each payment due to the State shall be made in an acceptable form, in the amount of the authorized fees, in accordance with written instructions provided by the State.-The instruments shall be forwarded to the State with all the supporting documentation as directed by the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.

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

- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).
- D.6. Conflicts of Interest. The Procuring Party warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the State or the Procuring Party on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.

- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*

- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D. 18. HIPAA Compliance. The State and Procuring Party shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information

Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").

- a. Procuring Party warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Procuring Party warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Procuring Party will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Procuring Party in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.
- d. The Procuring Party will indemnify the State and hold it harmless for any violation by the Procuring Party or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

**E. SPECIAL TERMS AND CONDITIONS:**

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

The State:

Gary Farley, Assistant Commissioner  
Department of Commerce and Insurance  
500 James Robertson Parkway  
Davy Crockett Tower, 9th Floor  
Nashville, Tennessee 37243  
Gary.Farley@tn.gov  
Telephone # (615) 741-7170  
FAX # (615) 253-4895

The Procuring Party:

Procuring Party Contact Name & Title  
Procuring Party Name  
Address  
Email Address  
Telephone # Number  
FAX # Number

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

E.3 Tennessee Department of Revenue Registration. The Procuring Party shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

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

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E.5. 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 Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Procuring Party's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Procuring Party of this Contract; previously possessed by the Procuring Party without written obligations to the State to protect it; acquired by the Procuring Party without written restrictions against disclosure from a third party which, to the Procuring Party's knowledge, is free to disclose the information; independently developed by the Procuring Party without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Procuring Party to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Procuring Party due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.6. State Furnished Property. The Procuring Party shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Procuring Party's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Procuring Party shall be responsible to the State for the residual value of the property at the time of loss.

E.7. Disclosure of Personal Identity Information. The Procuring Party shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Procuring Party. Any such report shall be made by the Procuring Party within twenty-four (24) hours after the instance has come to the attention of the Procuring Party. The Procuring Party, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Procuring Party shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

**IN WITNESS WHEREOF,**

**PROCURING PARTY LEGAL ENTITY NAME:**

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**PROCURING PARTY SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)**

**DEPARTMENT OF COMMERCE AND INSURANCE:**

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**JULIE MIX MCPEAK, COMMISSIONER**

**DATE**