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| seal-jpg | **STATE OF TENNESSEE TREASURY DEPARTMENT**  **DELEGATED AUTHORITY SOLICITATION # 30901-53023**  **AMENDMENT # 3**  **FOR RECRUITING SERVICES** |

**DATE: September 13, 2022**

**DA # 30901-53023 IS AMENDED AS FOLLOWS:**

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

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| **EVENT** | **TIME  (central time zone)** | **DATE** (all dates are state business days) | **CONFIRMED OR UPDATED** |
| 1. Solicitation Issued |  | July 12, 2022 | CONFIRMED |
| 2. Notice of Intent to Respond Deadline | 2:00 p.m. | July 18, 2022 | CONFIRMED |
| 3. Written “Questions & Comments” Deadline | 2:00 p.m. | July 25, 2022 | CONFIRMED |
| 4. State Response to Written “Questions & Comments” |  | August 5, 2022 | CONFIRMED |
| 5. Second Round of Written “Questions & Comments” Deadline | 2:00 p.m. | August 23, 2022 | CONFIRMED |
| 6. State Response to Written “Questions & Comments” |  | August 30, 2022 | CONFIRMED |
| 7. Third Round of Written “Questions & Comments” | 2:00 p.m. | September 8, 2022 | CONFIRMED |
| 8. State’s Response to Third Round of Written “Questions & Comments” |  | September 13, 2022 | CONFIRMED |
| 9. Offer Deadline | 2:00 p.m. | September 20, 2022 | CONFIRMED |
| 10. State Completes Qualifications Evidence Review & Identifies Responsive & Responsible Offers |  | October 3, 2022 | CONFIRMED |
| 11. State Releases Award Notifications |  | October 6, 2022 | CONFIRMED |
| 12. Contract Signing |  | October 13, 2022 | CONFIRMED |

1. **State responses to questions and comments in the table below amend and clarify this DA Solicitation.**

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

| **QUESTION / COMMENT** | | **STATE RESPONSE** |
| --- | --- | --- |
|  | I did not see a mention of this in the Q&As, so I just want to confirm if the RFP still restricts bidders only to those that operate in the State of Tennessee? If a change would be considered, then I would like to submit that request on behalf of our firm and participate in the RFP. | A similar question was posed during the first round of Written Questions & Comments. In response to the question, the State agreed that having an office in the state of Tennessee was not required if the bidder has a registered agent in the state of Tennessee. See the response to question 7 in Amendment 1 to the Solicitation, which can be located at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities1.html> |
|  | Under Section C, can you confirm the maximum liability dollar amount? | See Item 3 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Under Section C, can you confirm the payment terms for the state? | See Items 3 and 4 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Under Section C, 3, we are proposing a 25% fee.  Language: 25 % of the hired individual’s first year base salary at the time of hire (not including benefits, bonuses or incentives) | Agreed. See Item 4 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Under Section D, 5, we are requesting mutual termination for convenience rights at 30 days?  Language: Termination for Convenience. Either Party may terminate this Contract for convenience without cause and for any reason by providing at least thirty (30) days written notice to the other Party.  The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date.  In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor.  In no event shall the State’s exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract. | The State respectfully declines. |
|  | Under D, 18, please provide the maximum liability dollar amount under Section C? | See Item 3 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Under D, 19, can we agree to carve out language regarding the State’s gross negligence, willful misconduct or violations of the Agreement?  Language: Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys’ fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract. Notwithstanding the foregoing, Contractor need not indemnify, defend or hold the State of Tennessee harmless for claims arising from the State of Tennessee’s gross negligence and willful misconduct or its violations of this Agreement.  In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106. | See Item 5 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Under D, 26, can we agree to a neutral location such as NY, DE or CA? | The State respectfully declines. |
|  | Under D, 32, can we agree to remove “advertising injury” coverage under Commercial General Liability (“CGL”) Insurance? | The State respectfully declines. |
|  | Under E, 5, can you advise of a circumstance(s) in which the State would provide PII to Contractor in delivering direct hire services? | It is possible the Contractor may receive applications on behalf of the State that contain PII. It is also possible the Contractor may obtain PII while screening candidates on behalf of the State to confirm the candidates meet the experience and educational requirements for the positions. |
|  | Many of our clients prefer to have the option to either directly hire a candidate or bring them on as a contractor with the option to hire. Can we also submit ‘Do Not Exceed’ hourly rates as part of a contractor-with-the-option-to-hire offering? | The State respectfully declines. |
|  | Page 9 Section A.1 Pro Forma Contract  Service and Delivery Timelines  Please omit the following phrase from Section A.1: and shall meet all service and delivery timelines as specified by this Contract. Since this is a contract for recruiting services (i.e., not a project-oriented effort with deliverables) where the Contractor is compensated after the successful placement of a candidate with the State, service and delivery timelines are not applicable. | The State respectfully declines. The Contract contains a requirement for the delivery of weekly reports in Section A.3. |
|  | Page 10 Section A.5 Pro Forma Contract Contingent Payment  Please edit the second sentence of Section A.5 as follows to contemplate a pro-rata refund of the fee paid in lieu of a 100% refund: If a candidate who is hired by the State (employee) voluntarily leaves the employment of the State (for a reason other than a reduction in workforce), then the Contractor will provide the State with a replacement candidate at no additional charge to the State or refund a pro-rata portion of the fee paid. If the full fee is paid by the State to the Contractor within fifteen (15) days of the invoice date, a ninety (90) calendar day pro-rata guarantee will be in effect. Otherwise, a thirty (30) calendar day pro-rata guarantee will be in effect. The refund or credit will be equal to 1/90th or 1/30th of the fee amount actually paid to the Contractor for such candidate, as applicable, multiplied by the number of calendar days remaining in the guarantee period as of the last day of employment with the State. | The State respectfully declines. |
|  | Pages 10-11 Section A.6 Pro Forma Contract Warranty  The current warranty provision set forth in Section A.6 is not applicable to recruiting services and seems more applicable to a project with goods or tangible deliverables. The guarantee period described in Section A.5 is more germane to recruiting services. In lieu of the original warranty provision, please insert the following:  THE CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING THE RECRUITING SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR ANY PURPOSE. | The State respectfully declines. This section is a standard Tennessee state contractual provision required in all Tennessee state contracts and only applies as applicable. Here, it does not apply to this solicitation. |
|  | Page 11 Section A.7 Pro Forma Contract Inspection & Acceptance  Please omit Section A.7 as not applicable since it contemplates a project with tangible deliverables; not a contract for recruiting services. | The State respectfully declines. This section is a standard Tennessee state contractual provision required in all Tennessee state contracts and only applies as applicable. Here, it does not apply to this solicitation. |
|  | Page 14 Section D.6 Pro Forma Contract Termination for Cause  Please replace Section D.6 with the following Termination for Cause provision as it contemplates a notice and cure period: In the event, a Party breaches a material term of this Contract (“Breach Condition”) the other Party shall have the right to immediately terminate the Contract after providing the breaching party with a written notice setting forth the Breach Condition(s) and a period of at least thirty (30) calendar days from the date of said notice to cure such Breach Condition(s). | See Item 6 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Page 14 Section D.7 Pro Forma Contract Assignment and Subcontracting  Please add the following sentence to the end of Section D.7: Notwithstanding the foregoing, the Contractor may utilize employees of its parent corporation and affiliates as necessary for the performance of the services and such utilization shall not be considered a subcontractor relationship. | The State respectfully declines. If a successful vendor intends to subcontract with another company to perform any of the services the vendor is required to perform under the contract, the vendor must obtain the prior written approval of the State. |
|  | Page15 Section D.10 Pro Forma Contract Prohibition of Illegal Immigrants  Please omit the second sentence in Section D.10(c) as the records maintained in an employee’s personnel file is highly sensitive and confidential. | The State respectfully declines. Section D.10(c) does not require the State’s review of an employee’s personnel file. It merely requires the Contractor to maintain records identifying the personnel it uses in performing services under the contract to verify the contractor’s compliance with Tennessee state law; namely, Tenn. Code Ann. § 12-3-309. |
|  | Pages16-17 Section D.18 Pro Forma Contract  Limitation of Contractor’s Liability  Please make the Maximum Liability equal to the contract value and omit subpart (ii) and the phrase “or acts or omissions that result in personal injuries or death” from Section D.18. | The State respectfully declines in as much as these revisions are prohibited by State law; namely, Tenn. Code Ann. § 12-3-701. |
|  | Page 17 Section D.19 Pro Forma Contract Hold Harmless  Please replace the first paragraph of Section D.19 with the following: The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all losses for bodily injury (including death) or damages to real property resulting directly from the Contractor’s negligence or willful misconduct. | See Item 5 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Page 17 Section D.20 (d) Pro Forma Contract  HIPAA Compliance  Please use the following in lieu of the original language in Section D.20 (d): The Contractor will indemnify the State and hold it harmless for any violation by the Contractor of the Privacy Rules. This includes the costs of responding to a breach of protected health information as required by applicable law, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages imposed by the applicable governmental authority paid by the State because of the violation. | The State respectfully declines. This section is a standard Tennessee state contractual provision required in all Tennessee state contracts, and is only applicable if the subject contract provides for the delivery or receipt of “protected health information”. Here, there will be no delivery or receipt of “protected health information”. |
|  | Page 19-20 Section D.32 Pro Forma Contract  Insurance  Please omit the second sentence. The required minimum insurance requirements should be specifically set forth in the contract. If changes to the contract’s insurance requirements are necessary, they should be mutually agreed upon and set forth in an amendment signed by both parties. Please change the word “immediately” in the third sentence of Section D.32 to “promptly”. Please omit all requirements to furnish copies of the Contractor’s insurance policies. Such documents are highly sensitive and confidential information that contractors generally do not disclose to clients. Please omit the first two sentences at the bottom of page 20 as any large business organization with multiple affiliates and subsidiaries would likely be unable to agree to them. The insurance requirements should be set forth in the contract and reasonably reflect the scope of services provided by the Contractor. | The State agrees with a few of these revisions. See Item 9 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Page 22 Section D.34 Pro Forma Contract Confidentiality of Records  The Contractor will be required to disclose confidential information during the performance of this contract. Therefore we request the following mutual confidential provision be inserted into Section in lieu of the original: Each party (the “Recipient”) agrees to protect the Confidential Information of the other party (the “Disclosing Party”) in a manner consistent with the treatment that Recipient accords its own Confidential Information of a similar nature, and the Recipient agrees to use and reproduce Confidential Information only to perform its obligations under this Agreement, for the discussion and/or evaluation of potential transactions, or for its internal collection, analysis and training purposes. The Recipient may disclose Confidential Information to its employees, agents, and subcontractors, who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. The Recipient shall be liable for any use, disclosure or dissemination of Confidential Information by such parties.  Confidential Information is any information which is identified by the Disclosing Party at the time of disclosure as being of a confidential nature (including, but not limited to, business plans, products, trade secret processes or methodologies, software, documentation, design specifications, other technical documents and other proprietary rights or information) or that is disclosed to the Recipient under circumstances that would lead a reasonable person to understand that such information is confidential or proprietary in nature. Confidential Information does not include information that (i) is or becomes generally available to the public without breach by Recipient of its confidentiality obligations under this Agreement, (ii) is received by Recipient from a third party without restriction against disclosure, (iii) was known to Recipient without restriction prior to disclosure, or (iv) is independently developed by Recipient without subsequent use of Disclosing Party’s Confidential Information. If Recipient becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, Recipient shall (to the extent legally permitted) provide Disclosing Party with prompt prior written notice of such requirement so that discloser may seek a protective order or other appropriate remedy. | The State respectfully declines in as much as Tennessee Code Annotated, Section 10-7-504 governs the confidentiality requirements of the State, which include, but are not limited to, keeping confidential social security numbers and other personally identifiable information of applicants for State positions. |
|  | Page 22 Section E.3 Pro Forma Contract Work Papers Subject to Review  Please omit Section E.2 as not applicable to a contract for recruiting services. | Agreed. See Item 7 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Pages 22-23 Section E.4 Pro Forma Contract Lobbying  Please omit Section E.4 as not applicable. It speaks of lobbying members of Congress in Washington, D.C., but this is a State of Tennessee procurement. | Agreed. See Item 8 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Page 23 Section E.5 Pro Forma Contract  Personally Identifiable Information  Please use the following in lieu of the second sentence of the second paragraph of Section E.5: Any such report shall be made by the Contractor within forth-eight (48) hours after the Unauthorized Disclosure has been confirmed by the Contractor. Please use the following in lieu of the forth sentence of Section E.5: The Contractor, shall provide credit monitoring services as required by applicable law for individuals whose PII was affected by the Unauthorized Disclosure. As required by applicable law, the Contractor shall notify the individuals affected by the Unauthorized Disclosure, including individual letters and public notice. | The State respectfully declines. |
|  | Vendor proposes the following changes to the language in Attachment C Pro Forma.  Page 24 Section E.8 Pro Forma Contract Candidate Screening Process and Information  Unless otherwise set forth in this contract, the Contractor checks references only by asking specific questions to select past employers with regard to skills and work history before Contractor places a candidate at a direct hire placement. Contractor has not engaged in any verification process other than this reference check.  If you request a copy of the results of any checks and/or screenings conducted on the Contractor’s candidates, the State agrees to keep such results strictly confidential and to use such results in accordance with applicable laws and solely for employment purposes.  The State agrees to hold in confidence the identity of any Contractor candidate and the candidate’s resume, social security number and other legally protected personal information, and the State agrees to implement and maintain reasonable security procedures and practices to protect such information from unauthorized access, use, modification or disclosure. | The State respectfully declines in as much as Tennessee Code Annotated, Section 10-7-504 governs the confidentiality requirements of the State, which include, but are not limited to, keeping confidential social security numbers and other personally identifiable information of applicants for State positions. |
|  | When awarded the Bid, the Vendor will collaborate, in good faith, with the State of TN – Department of Treasury to establish mutually agreed upon terms and conditions governing the services proposed.  Vendor proposes the following changes to the language in Attachment C Pro Forma.  D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State’s exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract. Contractor may terminate this Agreement for convenience without cause by providing sixty (60) days’ prior written notice to the State. | As stated in Amendment 2 to this Solicitation, the State will not entertain any changes to the *Pro Forma* Contract after the Written Questions & Comments Deadlines. The State expects the successful vendors to sign the *Pro Forma* Contract (Attachment C to the Solicitation), as amended in this Amendment 3.  The State respectfully declines. |
|  | Vendor proposes the following changes to the language in Attachment C Pro Forma:  D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract (“Breach Condition”),the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract. Additionally, if the State violates (breach) any terms of this Contract, Contractor shall have the ability to terminate the Agreement by providing ten (10) days’ prior written notice to the State. | See Item 6 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Vendor proposes the following changes to the language in Attachment C Pro Forma:  D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act (“PPACA”) with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State to the extent arising from Contractor’s failure to fulfill its PPACA responsibilities for itself or its employees. Contractor shall have no obligation to indemnify the State to the extent any claims are caused by the State. | The State respectfully declines. This section is a standard Tennessee state contractual provision required in all Tennessee state contracts. |
|  | Vendor proposes the following changes to the language in Attachment C Pro Forma:  D.17. Limitation of State’s Liability. The State shall have no liability except as specifically provided in this Contract. In no event ~~will the State be liable to the Contractor~~ shall either party be liable ~~or any other party~~ for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, 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. | The State respectfully declines. |
|  | Vendor proposes the following changes to the language in Attachment C Pro Forma:  D.18. Limitation of Contractor’s Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for ~~intentional torts~~, criminal acts, fraudulent conduct, or negligent acts or omissions that result in personal body injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor’s indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section. | The State respectfully declines in as much as these revisions are prohibited by State law; namely, Tenn. Code Ann. § 12-3-701. |
|  | Vendor proposes the following changes to the language in Attachment C Pro Forma:  D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which to the extent may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of negligent acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys’ fees, court costs, ~~expert witness fees, and other litigation expenses~~ for the State to enforce the terms of this Contract. | See Item 5 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |
|  | Vendor proposes the following language in Attachment C Pro Forma.  D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.  d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation. Contractor shall have no obligation to indemnify the State to the extent any such claim arises out of the negligence of the State. | The State respectfully declines. This section is a standard Tennessee state contractual provision required in all Tennessee state contracts, and is only applicable if the subject contract provides for the delivery or receipt of “protected health information”. Here, there will be no delivery or receipt of “protected health information”. |
|  | Vendor proposes the following changes to the language in Attachment C Pro Forma  D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor’s failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance (“TDCI”); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers’ compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Waiver of subrogation shall exclude claims that occur as a result of the gross negligence or willful misconduct of the State. Any deductible or self insured retention (“SIR”) over fifty thousand dollars ($50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor’s sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.  To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars ($2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars ($1,000,000) combined with an umbrella policy for an additional one million dollars ($1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers’ Liability Accident), ~~Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area.~~ In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as “ISO”) “Noncontributory—Other Insurance Condition” endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise ~~named~~ included as an additional insured. Additional insured shall be with respect to the Services performed under this Agreement, including defense costs, but excluding the proportionate share of negligence of such additional insured.  Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.  The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.  The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.  a. Commercial General Liability (“CGL”) Insurance  1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract ~~(including the tort liability of another assumed in a business contract)~~.  The Contractor shall maintain single limits not less than one million dollars ($1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.  b. Workers’ Compensation and Employer Liability Insurance  1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:  i. Workers’ compensation in an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.  2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:  i. The Contractor employs fewer than five (5) employees;  ii. The Contractor is a sole proprietor;  iii. The Contractor is in the construction business or trades with no employees;  iv. The Contractor is in the coal mining industry with no employees;  v. The Contractor is a state or local government; or  vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.  ~~c. Automobile Liability Insurance~~  ~~1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).~~  ~~2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.~~ | The State agrees with a few of these revisions. See Item 9 below for an amendment to the *Pro Forma* Contract (Attachment C to the Solicitation). |

1. **Delete Section C.1 of the *Pro Forma* Contract (Attachment C to the Solicitation) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million dollars ($1,000,000) ~~Written Dollar Amount ($Number)~~ (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

1. **Delete Section C.3.b of the *Pro Forma* Contract (Attachment C to the Solicitation) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**
2. The Contractor shall be compensated based upon the following payment methodology:

|  |  |
| --- | --- |
| **Goods or Services Description** | **Amount** (per compensable increment) |
| Providing the services contained in Section A of the Contract, Scope of Services | ~~22.5~~ 25% of the hired individual’s first year base salary at the time of hire (not including benefits, bonuses, or incentives) |

1. **Delete Section D.19 of the *Pro Forma* Contract (Attachment C to the Solicitation) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of the negligent acts, omissions, or willful misconduct ~~negligence~~ on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys’ fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.  
  
In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

1. **Delete Section D.6 of the *Pro Forma* Contract (Attachment C to the Solicitation) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

D.6. Termination for Cause. If ~~the Contractor~~ a Party (“Breaching Party”) fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract (“Breach Condition”), the other Party (“Non-breaching Party”) may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party ~~in a timely or proper manner, or if the Contractor materially violates any terms of this Contract (“Breach Condition”),the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State~~ may seek other remedies allowed at law or in equity for breach of this Contract.

1. **Delete Section E.3. of the *Pro Forma* Contract (Attachment C to the Solicitation) in its entirety** (any sentence or paragraph containing revised or new text is highlighted)**:**

~~E.3. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.~~

1. **Delete Section E.4. of the *Pro Forma* Contract (Attachment C to the Solicitation) in its entirety** (any sentence or paragraph containing revised or new text is highlighted)**:**

~~E.4. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:~~

~~a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.~~

~~b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,'' in accordance with its instructions.~~

~~c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.~~

~~This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.~~

1. **Delete Section D.32 of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

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

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars ($2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars ($1,000,000) combined with an umbrella policy for an additional one million dollars ($1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers’ Liability Accident), Contractor shall advise the State and allow the State to view ~~provide~~ a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as “ISO”) “Noncontributory—Other Insurance Condition” endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and shall endeavor to provide it again ~~thirty (30) calendar days before~~ on the date of renewal or replacement of coverage, but no later than seven (7) business days after the renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. ~~The State reserves the right to require~~ The Contractor shall permit the State to review complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage** **and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

1. Commercial General Liability (“CGL”) Insurance
   1. The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars ($1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

1. Workers’ Compensation and Employer Liability Insurance
   1. For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
      1. Workers’ compensation in an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.
   2. If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
      1. The Contractor employs fewer than five (5) employees;
      2. The Contractor is a sole proprietor;
      3. The Contractor is in the construction business or trades with no employees;
      4. The Contractor is in the coal mining industry with no employees;
      5. The Contractor is a state or local government; or
      6. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.
2. Automobile Liability Insurance
3. The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
4. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.
5. **DA Solicitation Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this DA Solicitation not expressly amended herein shall remain in full force and effect.