



**AGENDA**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #036**  
**MONDAY, JANUARY 29, 2018, 2:00 P.M.**  
**TN TOWER – 3<sup>rd</sup> FLOOR, NASHVILLE ROOM**

AGENDA ITEM	PAGE #
I. Call to Order	--
II. Introduction of New Advisory Council Member – Brad Eskind	
III. Approve Minutes from October 3, 2017 Meeting..... (see attached documentation)	<b>4</b>
IV. New Business  Proposed revisions to the following Central Procurement Office documents (see attached documentation):	
(1) <i>Procurement Procedures Manual of the Central Procurement Office</i> , Section 6.7.1, Informal Purchases .....	<b>14</b>
(2) <i>Procurement Procedures Manual of the Central Procurement Office</i> , Section 5.4.7, Exceptions from Requisitions for Purchase – Direct Purchase Order .....	<b>18</b>
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(8) Central Procurement Office Policy Number 2013-007, <i>Grant Management and Subrecipient Monitoring Policy and Procedures</i> – Section 10, Debarment and Suspension – NEW .....	<b>53</b>
(9) Grant (“GR”) and Governmental Grant (“GG”) Templates, Section D. 34, Debarment and Suspension - NEW.....	<b>55</b>

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(11)Governmental Grant (“GG”) Template, Optional Section E. # Provisions – Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency & Accountability Act (“FERPA”) and Rule 2 Compliance .....	<b>59</b>
(12)GR And GG Templates and IG and GE Models, Optional Section E. # Provisions, Incorporation of Required Clauses for Federal Awards - NEW.....	<b>65</b>
(13)Central Procurement Office Policy Number 2013-007, <i>Grant Management and Subrecipient Monitoring Policy and Procedures</i> , Section 4, Grantee Selection Process – Incorporation of Procurement Standards, 2 C.F.R §§ 200.317 to 200.326.....	<b>68</b>
V. Other Business	--
VI. Adjournment	--

**MINUTES OF OCTOBER 3, 2017  
MEETING**



**MINUTES**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #035**  
**TUESDAY, OCTOBER 3, 2017 – 2:30 P.M.**  
**TN TOWER – 3<sup>rd</sup> FLOOR – NASHVILLE ROOM**

**Members in Attendance:**

Mike Perry, Jason Mumpower, Summer Carr, Tim Drown (designated by Commissioner Martin to attend in Buddy Lea's absence), Stewart Shunk, Sean Newman, Rick Peppers, Michelle Lane

**Members Participating by Phone:**

Christopher Todd

**Others in Attendance:**

Paul Krivacka, Jenny Young, Alex Komisar, Ellen Lipinski, Toni Stuart, Phil Heffington, Shannon Howell, Bryan Chriske, Don Ivancic, Chris Salita, Daniel Leeson, Cooper Gilmore, Sharonette Thomas, Brian Hawkins, Charlotte McKinney, Kim Adkins (Capitol Strategy Group)

**I. Call to Order:** Mike Perry, Chief Procurement Officer, called the meeting to order and recognized that a quorum of voting members was present.

**II. Minutes from the July 26, 2017 Meeting:** Mr. Perry asked if there were any corrections or additions to the minutes from the July 26, 2017 meeting. Seeing none, a motion was made by Jason Mumpower, Chief of Staff, Comptroller's Office, to accept the minutes as presented. The motion was seconded by Ms. Summer Carr, Assistant General Counsel, Department of Economic and Community Development. All members voted in favor – none opposed.

**III. New Business:**

Mr. Perry announced that terms will be expiring on October 31, 2017 for the following three Advisory Council members:

- Rick Peppers, Nashville Office Interiors, appointed by Governor Haslam
- Scottie Domenico, AED Brands, appointed by Speaker Beth Harwell
- Chris Todd, Envirogreen, Inc., appointed by Chairman of the Fiscal Review Committee, Mark White

Mr. Perry thanked each of these members for their service on the Advisory Council and noted that the appointing authorities had been notified that new appointments will be necessary. The Central Procurement Office ("CPO") is gathering resumes and biographies on potential replacement candidates to forward to the appointing authorities as requested.

Mr. Perry announced that Mr. Buddy Lea, Department of Finance & Administration, has been re-appointed by Commissioner Larry Martin to serve another four-year term as a voting member on the Advisory Council, and Mr. Sean Newman with CDE Lightband, has been re-appointed by Lt. Governor Randy McNally to serve a full four-year term as a non-voting member. Mr. Perry congratulated Mr. Lea and Mr. Newman on their re-appointment and thanked them for their willingness to continue to serve.

Mr. Perry also welcomed Michelle Lane and congratulated her on her new position as Chief Procurement Officer for Metropolitan Nashville Government.

At this point, Mr. Perry announced that Mr. Tim Drown, Associate Counsel, Department of Finance & Administration, had been designated by Commissioner Larry Martin to attend the meeting in Mr. Buddy Lea's absence.

Seeing no other announcements, Mr. Perry asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the Central Procurement Office ("CPO") documents from the New Business section of the agenda.

#### (1) Click-Wrap Agreement Approval Request

Mr. Krivacka summarized the following points with regard to the Click-Wrap Agreement Approval Request proposal:

- This proposal contains changes to the Click-Wrap Agreement Approval Request related to:
  - limiting the dollar value for which it could be used to \$10,000;
  - adding additional procedural instructions;
  - adding a place for details regarding the type of sensitive data involved (if any). This will assist Strategic Technology Services ("STS") in their approvals; and
  - adding a place to explain why a request has been denied so that the CPO can give feedback to the agency requesting approval of the Click-Wrap Agreement.

Seeing no discussion, Mr. Mumpower made a motion to recommend the Click-Wrap Agreement Approval Request proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Drown. All members voted in favor – none opposed.

#### (2) Limitation of Contractor's Liability Request

Mr. Krivacka summarized the following points with regard to the Limitation of Contractor's Liability Request proposal:

After speaking with the Office of the Comptroller of the Treasury ("COT") one additional change was recommended to the Limitation of Contractor's Liability Request that was not reflected on the copy included in the agenda packet. Mr. Krivacka continued that an additional change to COT's approval box was requested to clarify that COT approval is not needed for Contractor's

Liability Requests that are two times the value of the contract or less. Mr. Mumpower clarified that COT approval is not needed for Contractor's Liability Requests that are two times the value of the contract or *more* as is in keeping with the statute. Mr. Krivacka apologized and agreed that Mr. Mumpower was correct in stating that COT approval is not needed for Contractor's Liability Requests that are two times the value of the contract or *more*. Mr. Mumpower added that COT approval is needed if the Contractor's Liability Request is two times the value of the contract or *less*.

- This proposal clarifies that the use of the Contractor's Liability Request document is only for changes to the limitation of **Contractor's** liability. In the past the same document was used for changes to the State's liability and Contractor's liability. The document will be retitled to "Limitation of Contractor's Liability Request" to make it clear that it is only for changes to a Contractor's liability. Any request to change the limitation of the State's liability should be made using the Rule Exception Request ("RER") document.
- This proposal also removes the requirement that the Commissioner of the Department of Finance & Administration ("F&A") approve a proposed limitation of contractor's liability in excess of two times the value of the contract. Mr. Krivacka also stated that COT approval and F&A approval was removed as a statutory requirement in 2015 with respect to increases in maximum liability beyond two times the contract value.

For the record, Mr. Perry noted that all Advisory Council members were provided with a hard copy of the revised Limitation of Contractor's Liability Request changes at the meeting.

Seeing no additional discussion, Mr. Mumpower made a motion to recommend the Limitation of Contractor's Liability Request proposal with the changes as discussed to the Procurement Commission for approval. The motion was seconded by Mr. Drown. All members voted in favor - none opposed.

### (3) Rule Exception Request ("RER") Template

Mr. Krivacka summarized the following points with regard to the Rule Exception Request ("RER") Template proposal:

- This proposal relates to the previous agenda item. As a result of the proposal to change the title of the "Limitation of Liability Request" to the "Limitation of Contractor's Liability Request", the instructional note in the Rule Exception Request needs to be updated to reflect this change.
- The instructional note now provides that:  
*Any change to the template language regarding the Limitation of Contractor's Liability Request shall be submitted using the Limitation of Contractor's Liability Request.*
- The instructional note will also make clear that any change to the State's limitation of liability must be requested through a RER.

Seeing no discussion, Mr. Mumpower made a motion to recommend the Rule Exception Request ("RER") Template proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Drown. All members voted in favor - none opposed.

(4) Central Procurement Office Policy Number 2013-004, *Contract Management Policy and Procedures*, Section 5.3.2, Limitations of Liability

Mr. Krivacka presented the following points with regard to the Central Procurement Office Policy Number 2013-004, *Contract Management Policy and Procedures*, Section 5.3.2, Limitations of Liability proposal:

- This proposal updates the statutory references and language to comply with Tenn. Code Ann. § 12-3-701.

Seeing no discussion, Mr. Drown made a motion to recommend the Central Procurement Office Policy Number 2013-004, *Contract Management Policy and Procedures*, Section 5.3.2, Limitations of Liability proposal as presented to the Procurement Commission for approval. The motion was seconded by Ms. Carr. All members voted in favor – none opposed.

(5) Interagency Agreement – Grant Model (“IG”), E.#. FERPA

Mr. Krivacka presented the following points with regard to the Interagency Agreement – Grant Model (“IG”), E.#. FERPA proposal:

This proposal:

- Corrects the title of the FERPA clause as it should be the “Family Educational Rights and Privacy Act” (not federal).
- Removes the following sentence:  
*Grantee shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Grantee’s failure to comply with this section.*
- The purpose of the IG Model is to allow for a vehicle to facilitate grants between State agencies and it is inappropriate to have an indemnification clause in this agreement.

Seeing no additional discussion, Mr. Mumpower made a motion to recommend the Interagency Agreement – Grant Model (“IG”), E.#. FERPA as presented to the Procurement Commission for approval. The motion was seconded by Mr. Drown. All members voted in favor – none opposed.

(6) Tennessee Local or Federal Government (“GU”) Model

Mr. Krivacka summarized the following points with regard to the Tennessee Local or Federal Government (“GU”) Model proposal:

- This proposal:
  - Changes the records clause to five years to be consistent with other CPO models dealing with the records clause
  - Adds the Iran Divestment Act contract clause that was statutorily mandated.

Seeing no discussion, Mr. Drown made a motion to recommend the Tennessee Local or Federal Government ("GU") Model as presented to the Procurement Commission for approval. Mr. Mumpower seconded the motion. All members voted in favor – none opposed.

(7) Contract Termination Request

Mr. Krivacka summarized the following points with regard to the Contract Termination Request proposal:

- This proposal adds a question to provide details regarding the termination basis. For example, was the termination for convenience, cause, or lack of funding?
- Adds a question for the agency to confirm that notice will be sent in accordance with any applicable notice requirements in the contract term.
- These are common questions asked by reviewers and will assist the CPO with the review process. These questions help to ensure that the State does not commit a repudiatory breach of a contract.

To clarify, Mr. Perry stated that the Contract Termination Request would be used by a State agency when asking the CPO to handle the due process to cancel a contract. Mr. Krivacka confirmed that Mr. Perry was correct.

Mr. Perry asked if there was any additional discussion on agenda item (7). Seeing none, Mr. Mumpower made a motion to recommend the Contract Termination Request, as presented to the Procurement Commission for approval. Mr. Drown seconded the motion. All members voted in favor – none opposed.

(8) Central Procurement Office Policy Number 2015-010, *Statewide Purchasing Card Policy and Procedures*

Mr. Krivacka summarized the following points with regard to the Central Procurement Office Policy Number 2015-010, *Statewide Purchasing Card Policy and Procedures* proposal:

- Proposed changes to Section 5.3., State Agency P-Card Program Coordinator, include:
  - Changing from one business day to at least five business days for the CPO to get a new agency P-Card coordinator access and training. The additional advance notice is beneficial to the P-Card program administration team.
  - Adding a requirement for the State agency P-Card Program Coordinator to complete training and sign the program coordinator designation form.
- This proposal adds a requirement to Section 5.7.1. that the Cardholder must also be a full-time State employee.
- The following changes are proposed to section 9.1. Duty of State Agencies:
  - Removal of the bullet point requiring "independent review of the P-Card account maintenance activity at last monthly if the State Agency P-Card Program Coordinator is also a Cardholder or User." This change is because the State Agency P-Card Program Coordinator has a lot of authority such as being able to modify spend and cycle limits, access reports on all cardholder spend limits, and report and oversee fraudulent claims on behalf of the

agency cardholders; therefore, it would be best to prevent the potential conflict of interest by not having them be cardholders or users.

- The proposed change to Section 12 adds “food, beverage, or catering charges for meetings”. Food and beverage Merchant Category Codes (“MCCs”) are blocked as part of the routine P-Card set up. There are a lot of requests to remove this restriction and this request would remove the requirement for the Central Fiscal Office Cardholder to request an exception as they would be allowed to make such purchases.

To clarify, Mr. Perry stated that the proposed change to Section 12 related to food, beverage, or catering charges would remove the prohibition on those MCC codes for all State agencies while maintaining the normal reconciliation process and other safeguards. Mr. Krivacka stated that Mr. Perry was correct.

Seeing no additional discussion, Mr. Drown made a motion to recommend the Central Procurement Office Policy Number 2015-010, *Statewide Purchasing Card Policy and Procedures* as presented to the Procurement Commission for approval. Ms. Carr seconded the motion. All members voted in favor – none opposed.

#### (9) Request for Qualifications (“RFQ”) Template

Mr. Krivacka summarized the following points with regard to the Request for Qualifications (“RFQ”) Template proposal:

This proposal would add additional clarifications to the instructions and template language. In particular:

- Adds the following note to instructions at Section 1.5. Collaborative Value Development (“CVD”).  
“Please refer to Central Procurement Policy 2013-002, Procurement Methods Policy and Procedures for more details.” In the event that a State agency decides to use the CVD process this note would refer them to the CPO policy that relates to the CVD process.
- Additional Instructions were added to Section 5.6: Option: Contract Award:  
**Option: Contract Award**  
Add the following as RFQ § 5.6., Contract Award, if the State will solicit a Cost Proposal from Qualified Respondents, which will result in a contract award. Note: an approved Rule Exception Request (“RER”) will be required if this RFQ will be followed by anything other than a Request for Proposals.
- The current language at Section 5.3. assumes cost proposals are going to be scored when included:  
  
**Existing language:** 5.3 Cost Proposals: If included as part of this solicitation then only Qualified Respondents, that are responsive and responsible and in the competitive range, will continue onto Part Two, Cost Proposal evaluation. The Cost Proposal containing the lowest cost will receive the maximum number of points per each section. See RFQ Attachment D, Cost Proposal & Evaluation Guide.
- Following is a proposed revision to accommodate the inclusion of cost proposals without evaluation:

**Proposed language:** 5.3 Cost Proposals: If cost is included as an evaluation category in this solicitation then only Qualified Respondents, that are responsive and responsible and in the competitive range, will continue onto Part Two, Cost Proposal evaluation. The Cost Proposal containing the lowest cost will receive the maximum number of points per each section. See RFQ Attachment D, Cost Proposal & Evaluation Guide.

Mr. Perry asked a question related to the CVD process as discussed in the previous agenda item (8). Mr. Perry asked if the policy that was approved by the Procurement Commission included a requirement that the CVD process was only available to the Central Procurement Office. Mr. Krivacka confirmed that the policy approved by the Procurement Commission did include a requirement that the CVD process was only available to the Central Procurement Office. Mr. Perry asked if the proposed change to Policy number 2015-010 would infer that State agencies would be allowed to use the CVD process. Mr. Krivacka responded that he did not believe that would be the case. Mr. Perry stated that he wanted to be sure that it was very clear that the CVD process could only be used by the CPO and not by a State agency that was leading a procurement. Mr. Krivacka stated that another problem would be that an RFQ can be used for purposes of gathering information about an industry or respondents, but only the CPO can use an RFQ to award a contract and agency use of the RFQ to use the CVD process would be consistent with that limitation.

Seeing no additional discussion, Mr. Mumpower made a motion to recommend the Request for Qualifications ("RFQ") Template as presented to the Procurement Commission for approval. Mr. Drown seconded the motion. All members voted in favor – none opposed.

#### (10) Solicitation Configurator Terms addition

Mr. Krivacka summarized the following points with regard to the Solicitation Configurator Terms addition proposal:

- This proposal adds a few additional terms to solicitations generated in Edison as follows:
  - Adds Inspection of Procurement File and Protest by Respondent to the configurator.
  - Also adds the Negotiations term for use by the CPO.

Mr. Perry clarified for Council members that the word "Configurator" was a reference to Edison.

Seeing no additional discussion, Mr. Mumpower made a motion to recommend the Solicitation Configurator Terms addition as presented to the Procurement Commission for approval. Mr. Drown seconded the motion. All members voted in favor – none opposed.

#### (11) Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information

Mr. Krivacka summarized the following points with regard to the Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information proposal:

- This proposal is just a “clean-up” item to reflect updates that have been made to the resources available online on the TEAM TN resources page.
- For example – some changes are to document titles such as the “Limitation of Contractor’s Liability Request” presented earlier in the meeting.
- Some items have been deleted – for example a number of delegated authority templates were consolidated back in 2015.
- Some new items have been added, but this list has not been updated recently. For example, the Iran Divestment Act Certification was added in 2016.

Seeing no additional discussion, Mr. Drown made a motion to recommend the Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information as presented to the Procurement Commission for approval. Mr. Mumpower seconded the motion. All members voted in favor – none opposed.

#### (12) Grant (“GR”) and Governmental Grant (“GG”) Templates, D. 27 and optional E.#.SNAP

Mr. Krivacka summarized the following points with regard to the Grant (“GR”) and Governmental Grant (“GG”) Templates, D. 27 and optional E.#.SNAP proposal:

- In Section D.27., State Interest in Equipment or Motor Vehicles, this proposal adds a new subsection to include the Vehicle Identification Number (“VIN”). The Department of Revenue requires VIN numbers to ensure that liens are properly noted on individual vehicles.
- Grants that involve the Supplemental Nutrition Assistance Program (“SNAP”) require the Title VI Civil Rights language per the USDA Civil Rights Director; therefore, that requirement has been added as a new optional term.

Seeing no additional discussion, Mr. Mumpower made a motion to recommend the Grant (“GR”) and Governmental Grant (“GG”) Templates, D. 27 and optional E.#.SNAP as presented to the Procurement Commission for approval. Mr. Drown seconded the motion. All members voted in favor – none opposed.

#### (13) Contractor Hosted Services and Confidential Data - Optional Language

Mr. Krivacka summarized the following points with regard to the Contractor Hosted Services and Confidential Data - Optional Language proposal:

- This proposal will add new optional language to all CPO contract templates and models.
- This proposal also adds minimum requirements to include in contracts where the Contractor will be hosting services, for example., cloud-based, Software as a Service (“SaaS”), and data deemed confidential by State or Federal statute or regulation, or the payment card industry, also referred to as “Confidential State Data”.
- This language has been vetted by STS Security.

Seeing no additional discussion, Mr. Drown made a motion to recommend the Contractor Hosted Services and Confidential Data - Optional Language as presented to the Procurement

Commission for approval. Mr. Mumpower seconded the motion. All members voted in favor – none opposed.

**IV. Other Business:** Mr. Perry asked if there was any other business to be brought before the Council and saw none.

**V. Adjournment:** Seeing no other business, a motion for adjournment was made by Mr. Drown and seconded by Mr. Mumpower. All members voted in favor – none opposed; whereupon the October 3, 2017 Advisory Council meeting was adjourned.

***PROCUREMENT PROCEDURES***  
***MANUAL OF THE CENTRAL***  
***PROCUREMENT OFFICE,***  
**SECTION 6.7.1, INFORMAL PURCHASES**

**REDLINE VERSION**

**REQUEST: Revise Section 6.7.1 of the *Procurement Procedures Manual of the Central Procurement Office* as follows:**

*6.7. Purchase Order Exemptions.*

Due to the unique nature of the goods or services involved, the CPO will not require a Purchase Order to accompany payment requests for the enumerated items below.

*6.7.1. Informal Purchases.*

The items listed below do not require a Purchase Order or a contract if:

- (a) they are not available on a statewide or agency term contract;
- (b) they are supported by an invoice from the vendor of the goods or services; and,
- (c) performance occurs in no more than ninety (90) days for the following:
  - Telephone bills
  - Utility bills, including connection fees
  - Postage charges in connection with use of postage meter machines owned or leased by the State
  - Title insurance
  - Textbooks and instructional materials approved by the State Textbook and Instructional Materials Quality Commission

***PROCUREMENT PROCEDURES***  
***MANUAL OF THE CENTRAL***  
***PROCUREMENT OFFICE,***  
**SECTION 6.7.1, INFORMAL PURCHASES**

**CLEAN VERSION**

**REQUEST: Revise Section 6.7.1 of the *Procurement Procedures Manual of the Central Procurement Office* as follows:**

6.7. *Purchase Order Exemptions.*

Due to the unique nature of the goods or services involved, the CPO will not require a Purchase Order to accompany payment requests for the enumerated items below.

6.7.1. *Informal Purchases.*

The items listed below do not require a Purchase Order or a contract if:

- (a) they are not available on a statewide or agency term contract;
- (b) they are supported by an invoice from the vendor of the goods or services;
- and,
- (c) performance occurs in no more than ninety (90) days for the following:
  - Telephone bills
  - Utility bills, including connection fees
  - Postage charges in connection with use of postage meter machines owned or leased by the State
  - Title insurance
  - Textbooks and instructional materials approved by the State Textbook and Instructional Materials Quality Commission

***PROCUREMENT PROCEDURES***  
***MANUAL OF THE CENTRAL***  
***PROCUREMENT OFFICE,***  
**SECTION 5.4.7, EXCEPTIONS FROM**  
**REQUISITIONS FOR PURCHASE –**  
**DIRECT PURCHASE ORDER**

**REDLINE VERSION**

**REQUEST: Revise Section 5.4.7, Exceptions from Requisitions for Purchase – Direct Purchase Order, of the *Amended Procurement Procedures Manual of the Central Procurement Office* as follows:**

5.4.7. Exceptions from Requisitions for Purchase - Direct Purchase Orders

Direct Purchase Orders are Purchase Orders that are created without first creating a Requisition for Purchase in Edison. ~~Direct Purchase Orders may be used if ALL of the following are true:~~

~~The Direct Purchase Order may be used for Contracts with funds identified by the Agency to pay the Contractor or Grantee, such as with Delegated Authorities or Delegated Grant Authorities.~~

A Requisition shall be used if any of the following apply:

- The purchase ~~does not~~ requires ~~any~~ External Approvals. In addition to the approvals required in section 5.15.3-, External Approvals may also be required by:
  - Finance and Administration, Budget
  - Finance and Administration, Strategic Technology Services (IT products and services)
  - Department of Human Resources (training and staffing)
  - TDEC Hospitality Purchases
  - Department of General Services, Printing – Printing equipment and services
  - Department of General Services, Postal – Postal equipment and services
  - Department of General Services, CPO – Radio equipment
- The purchase is ~~made not using~~ a Special Request item;
- The purchase ~~does not~~ utilizes TN SmartShop;
- The purchase ~~does not~~ utilizes the Edison Inventory module; and
- The purchase is ~~It is not~~ a request to establish a new Contract.

~~A requisition should be used in connection with purchasing items with defined prices, even if the purchase satisfies all of the requirements to proceed with a Direct Purchase Order. The Direct Purchase Order should be used for Contracts with funds identified by the Agency to pay the Contractor or Grantee, such as with Delegated Authorities or Delegated Grant Authorities.~~

***PROCUREMENT PROCEDURES***  
***MANUAL OF THE CENTRAL***  
***PROCUREMENT OFFICE,***  
**SECTION 5.4.7, EXCEPTIONS FROM**  
**REQUISITIONS FOR PURCHASE –**  
**DIRECT PURCHASE ORDER**

**CLEAN VERSION**

**REQUEST: Revise Section 5.4.7, Exceptions from Requisitions for Purchase – Direct Purchase Order, of the *Amended Procurement Procedures Manual of the Central Procurement Office* as follows:**

5.4.7. Exceptions from Requisitions for Purchase - Direct Purchase Orders

Direct Purchase Orders are Purchase Orders that are created without first creating a Requisition for Purchase in Edison.

The Direct Purchase Order *may* be used for Contracts with funds identified by the Agency to pay the Contractor or Grantee, such as with Delegated Authorities or Delegated Grant Authorities.

A Requisition *shall* be used if any of the following apply:

- The purchase requires External Approvals. In addition to the approvals required in section 5.15.3, External Approvals may also be required by:
  - Finance and Administration, Budget
  - Finance and Administration, Strategic Technology Services (IT products and services)
  - Department of Human Resources (training and staffing)
  - TDEC Hospitality Purchases
  - Department of General Services, Printing – Printing equipment and services
  - Department of General Services, Postal – Postal equipment and services
  - Department of General Services, CPO – Radio equipment
- The purchase is made using a Special Request;
- The purchase utilizes TN SmartShop;
- The purchase utilizes the Edison Inventory module; and
- The purchase is a request to establish a new Contract.

***PROCUREMENT PROCEDURES  
MANUAL OF THE CENTRAL  
PROCUREMENT OFFICE,  
SECTION 4.1, DEFINITIONS***

**REDLINE VERSION**

**REQUEST: Revise Section 4.1, Definitions, specifically “Special Request,” of the *Amended Procurement Procedures Manual of the Central Procurement Office* as follows:**

**4. Definitions, Abbreviations and Codes.**

*4.1. Definitions.*

As used in this Manual, unless the context otherwise requires:

“Special Request” means the purchase of goods or services for which a price ~~within the scope of a Contract that is not specified within Edison.~~

***PROCUREMENT PROCEDURES  
MANUAL OF THE CENTRAL  
PROCUREMENT OFFICE,  
SECTION 4.1, DEFINITIONS***

**CLEAN VERSION**

**REQUEST: Revise Section 4.1, Definitions, specifically “Special Request,” of the *Amended Procurement Procedures Manual of the Central Procurement Office* as follows:**

**4. Definitions, Abbreviations and Codes.**

*4.1. Definitions.*

As used in this Manual, unless the context otherwise requires:

“Special Request” means the purchase of goods or services for which a price is not specified within Edison.

**FEE FOR GOODS OR SERVICES  
CONTRACT (“FA”) TEMPLATE, D.18,  
LIMITATION OF CONTRACTOR’S  
LIABILITY**

**REDLINE VERSION**

**REQUEST: Revise optional Section D.18, Limitation of Contractor's Liability, of the Fee for Goods or Services Contract Template (FA) as follows:**

**Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to **NUMBER (#)**, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

**Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required. This language is allowed only if the CPO has agreed in negotiations to use of this language.

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. Except as set forth below, in no event will the Contractor be liable to the State 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 unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**FEE FOR GOODS OR SERVICES  
CONTRACT (“FA”) TEMPLATE, D.18,  
LIMITATION OF CONTRACTOR’S  
LIABILITY**

**CLEAN VERSION**

**REQUEST: Revise optional Section D.18, Limitation of Contractor's Liability, of the Fee for Goods or Services Contract Template (FA) as follows:**

**Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to NUMBER (#), PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

**Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required. This language is allowed only if the CPO has agreed in negotiations to use of this language.

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. Except as set forth below, in no event will the Contractor be liable to the State 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, unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**FEE FOR GOODS OR SERVICES  
CONTRACT (“FA”) TEMPLATE,  
SECTION D.32, INSURANCE**

**REDLINE VERSION**

**REQUEST: Revise Section D.32, Insurance, of the Fee for Goods or Services Contract Template (FA) as follows:**

- 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. 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 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., 3<sup>rd</sup> 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 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 ~~commercial general liability~~CGL insurance, which shall be written on an ~~Insurance Services Office, Inc. (also known as 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;~~ ~~independent contractors, contractual liability, products and completed operations/products, 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 ~~bodily injury/property damage with a combined single limits not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).~~ 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.

**FEE FOR GOODS OR SERVICES  
CONTRACT (“FA”) TEMPLATE,  
SECTION D.32, INSURANCE**

**CLEAN VERSION**

**REQUEST: Revise Section D.32, Insurance, of the Fee for Goods or Services Contract Template (FA) as follows:**

- 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. 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 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., 3<sup>rd</sup> 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 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 insurance, 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.

**FEE FOR GOODS OR SERVICES  
CONTRACT (“FA”) TEMPLATE,  
OPTIONAL SECTION D. #,  
PROFESSIONAL LIABILITY  
INSURANCE**

**REDLINE VERSION**

**REQUEST: Revise optional Section D provision, Professional Liability Insurance, under Insurance Options of the Fee for Goods or Services Contract Template (FA) as follows:**

**Insurance Options**

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "written amount Dollars (\$NUMBER AMOUNT)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

**Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option**

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

**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 and employer liability insurance in the amounts required by appropriate state statutes.
- 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.

**Option 2: Professional Liability Insurance**

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

- d. Professional Liability Insurance
  - i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is may be written on a claims-made basis, then but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
    - 1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
    - 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
    - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
  - ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$1,000,000) per claim and **two million** dollars (\$2,000,000) in the aggregate; and
  - iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **threetwo million** (\$32,000,000) per claim and **three million** dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

**FEE FOR GOODS OR SERVICES  
CONTRACT (“FA”) TEMPLATE,  
OPTIONAL SECTION D. #,  
PROFESSIONAL LIABILITY  
INSURANCE**

**CLEAN VERSION**

**REQUEST: Revise optional Section D provision, Professional Liability Insurance, under Insurance Options of the Fee for Goods or Services Contract Template (FA) as follows:**

**Insurance Options**

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "written amount Dollars (\$NUMBER AMOUNT)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

**Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option**

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

**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 and employer liability insurance in the amounts required by appropriate state statutes.
- 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.

**Option 2: Professional Liability Insurance**

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

- d. Professional Liability Insurance
  - i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
    1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
    2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
    3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
  - ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$1,000,000) per claim and **two million** dollars (\$2,000,000) in the aggregate; and
  - iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million** (\$3,000,000) per claim and **three million** dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

**GRANT (“GR”) TEMPLATE, OPTIONAL  
SECTION E. #, INSURANCE**

**REDLINE VERSION**

**REQUEST: Replace Section E.#, Insurance, of the Grant Contract Template (GR) as follows:**

**Insurance**

Add the following Section as appropriate. Revise minimum coverage amounts and deleting any unneeded subsections. If unsure whether the Section is applicable, consult the CPO legal team.

~~E.#. Insurance. The Grantee shall carry adequate liability and other appropriate forms of insurance.~~

~~e. The Grantee shall maintain, at minimum, the following insurance coverage:~~

- ~~(1) Workers' Compensation/ Employers' Liability with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater;~~
- ~~(2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;~~
- ~~(3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence; and~~
- ~~(4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.~~

~~d. The Grantee shall provide a valid Certificate of Insurance naming the State as an additional insured and detailing Coverage Description; Insurance Company and Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Grantee shall obtain from Grantee's insurance carrier(s) and will deliver to the State waivers of the subrogation rights under the respective policies. Failure to provide required evidence of insurance coverage shall be a material breach of this Grant Contract.~~

~~c. To achieve the required coverage levels, a combination of a specific policy written with an umbrella policy covering liabilities above stated limits is acceptable. (For example: If appropriate limits are two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate written with an umbrella policy for one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate). If the deficient underlying policy is for coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Grantee 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 as well.~~

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

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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. 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 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., 3<sup>rd</sup> 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 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 insurance, 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.

d. Professional Liability Insurance

1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis then:

i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;

ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and

iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.

2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and

3) If the Contract involves the provision of services by medical professionals, a policy limit not less than three million (\$3,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

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**GRANT (“GR”) TEMPLATE, OPTIONAL  
SECTION E. #, INSURANCE**

**CLEAN VERSION**

**REQUEST: Replace Section E.#, Insurance, of the Grant Contract Template (GR) as follows:**

**Insurance**

Add the following Section as appropriate. Revise minimum coverage amounts and deleting any unneeded subsections. If unsure whether the Section is applicable, consult the CPO legal team.

E.#.

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. 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 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., 3<sup>rd</sup> 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 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 insurance, 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.

d. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis then:
  - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- 2) Any professional liability insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per claim and **two million dollars (\$2,000,000)** in the aggregate; and
- 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million (\$3,000,000)** per claim and **three million dollars (\$3,000,000)** in the aggregate for medical malpractice insurance.

**CENTRAL PROCUREMENT OFFICE  
POLICY NUMBER 2013-007, *GRANT  
MANAGEMENT AND SUBRECIPIENT  
MONITORING POLICY AND  
PROCEDURES* – SECTION 10,  
DEBARMENT AND SUSPENSION**

**NEW**

**REQUEST: Add Debarment and Suspension provision to *Central Procurement Office Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007* as required by Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t).**

**10. Debarment and Suspension.**

The State requires all contracts to contain a provision where a contracting party may be considered debarred or suspended from doing business with the State. The State hereby incorporates the Debarment and Suspension provision from Tenn. Comp. R. & Regs. 0690-03-01-.17 (2) (t) as mandatory language in all affected grant contracts.

**GRANT (“GR”) AND GOVERNMENTAL  
GRANT (“GG”) TEMPLATES, SECTION  
D. 34, DEBARMENT AND SUSPENSION**

**NEW**

**REQUEST: Add Debarment and Suspension provision as mandatory Section D language to GG and GR templates as required by Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t).**

**D. 34 Debarment and Suspension.**

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

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

**ENDOWMENT GRANT (“GE”) MODEL,  
SECTION D.28 – DEBARMENT AND  
SUSPENSION**

**NEW**

**REQUEST: Add Debarment and Suspension provision as mandatory Section D language to GE model as required by Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t).**

**D. 28 Debarment and Suspension.**

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

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

**GOVERNMENTAL GRANT (“GG”)  
TEMPLATE, OPTIONAL SECTION E. #  
PROVISIONS – FAMILY EDUCATIONAL  
RIGHTS AND PRIVACY ACT &  
TENNESSEE DATA ACCESSIBILITY,  
TRANSPARENCY & ACCOUNTABILITY  
ACT (“FERPA”) AND RULE 2  
COMPLIANCE**

**REDLINE VERSION**

**REQUEST: Remove indemnification language from optional Section E provisions, Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act (FERPA) and Rule 2 Compliance of the Governmental Grant Template (GG) as follows:**

**Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act**

Add the following section only if the Grantee will have access to personally identifiable student information or student information that is confidential pursuant to federal or state law.

- E. #. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Grantee shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Grantee warrants that the Grantee is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Grant Contract. The Grantee agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Grant Contract. The Grantee agrees to maintain the confidentiality of all education records and student information. The Grantee shall only use such records and information for the exclusive purpose of performing its duties under this Grant Contract.

The Grantee shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Grantee agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, –in any databases, to which the State has granted the Grantee access, and to only use such data for the exclusive purpose of performing its duties under this Grant Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Grantee shall be reported to the State within twenty-four (24) hours. ~~Grantee shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Grantee's failure to comply with this section.~~

**Tennessee Department of Mental Health and Substance Abuse Services**

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Section(s) as appropriate:

- E.#. Rule 2 Compliance. The State and the Grantee shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 C.F.R. §§ 2.1 *et seq.*
- a. The Grantee warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Grant Contract.
  - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the

course of performance of the Grant Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.

- c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Grantee in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.

- ~~d. The Grantee will indemnify the State and hold it harmless for any violation by the Grantee or its subcontractors of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This includes the costs of responding to a breach of protected 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. [not used in GG Grant Contracts]~~

**GOVERNMENTAL GRANT (“GG”)  
TEMPLATE, OPTIONAL SECTION E. #  
PROVISIONS – FAMILY EDUCATIONAL  
RIGHTS AND PRIVACY ACT &  
TENNESSEE DATA ACCESSIBILITY,  
TRANSPARENCY & ACCOUNTABILITY  
ACT (“FERPA”) AND RULE 2  
COMPLIANCE**

**CLEAN VERSION**

**REQUEST: Remove indemnification language from optional Section E provisions, Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act (FERPA) and Rule 2 Compliance of the Governmental Grant Template (GG) as follows:**

**Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act**

Add the following section only if the Grantee will have access to personally identifiable student information or student information that is confidential pursuant to federal or state law.

- E. #. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Grantee shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Grantee warrants that the Grantee is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Grant Contract. The Grantee agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Grant Contract. The Grantee agrees to maintain the confidentiality of all education records and student information. The Grantee shall only use such records and information for the exclusive purpose of performing its duties under this Grant Contract.

The Grantee shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Grantee agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Grantee access, and to only use such data for the exclusive purpose of performing its duties under this Grant Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Grantee shall be reported to the State within twenty-four (24) hours.

**Tennessee Department of Mental Health and Substance Abuse Services**

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Section(s) as appropriate:

- E.#. Rule 2 Compliance. The State and the Grantee shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 C.F.R. §§ 2.1 *et seq.*
- a. The Grantee warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Grant Contract.
  - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Grant Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.

- c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Grantee in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.

**GR AND GG TEMPLATES AND IG AND  
GE MODELS, OPTIONAL SECTION E. #  
PROVISIONS, INCORPORATION OF  
REQUIRED CLAUSES FOR FEDERAL  
AWARDS**

**NEW**

**REQUEST: Add Federal Equal Opportunity Clause, Federal Equal Opportunity Clause for Federally Assisted Construction Contracts, Davis-Bacon Act and Copeland Anti-Kickback Act, and Contract Work Hours and Safety Standard Act as optional Section E provisions to all grant templates and models, as follows:**

**Equal Opportunity**

Add the following Section only if the Grantee is receiving a federal award.

- E.#. Equal Opportunity. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.

**Equal Opportunity for Federally Assisted Construction Contracts**

Add the following section only if the Grantee is receiving a federal award and the contract provides for federally assisted construction.

- E. #. Federal Equal Opportunity Clause for Federally Assisted Construction Contracts. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.

**Davis-Bacon Act and Copeland Anti-Kickback Act**

Add the following section only if the Grantee is receiving a federal award and the contract involves construction.

- E. #. Davis-Bacon Act and Copeland Anti-Kickback Act. As a condition for receipt of grant funds, the Grantee agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and the Copeland Anti-Kickback Act at 18 U.S.C § 874 et seq., as those sections are amended from time to time during the term.

**Contract Work Hours and Safety Standard Act**

Add the following section only if the Grantee is receiving a federal award in excess of one hundred thousand dollars (\$100,000) and mechanics and laborers will be employed in construction work under the contract. This section does not apply to the purchases of supplies and materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

E. #. Contract Work Hours and Safety Standard Act. As a condition for receipt of grant funds, the Grantee agrees to comply with the Contract Work Hours and Safety Standard Act at 40 U.S.C. § 3701 et seq., as that section is amended from time to time during the term.

**CENTRAL PROCUREMENT OFFICE  
POLICY NUMBER 2013-007, *GRANT  
MANAGEMENT AND SUBRECIPIENT  
MONITORING POLICY AND  
PROCEDURES*, SECTION 4, GRANTEE  
SELECTION PROCESS –  
INCORPORATION OF PROCUREMENT  
STANDARDS, 2 C.F.R §§ 200.317 TO  
200.326**

**REDLINE VERSION**

**REQUEST: Revise Section 4 of the *Central Procurement Office Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007* as follows:**

**4. Grantee Selection Process.**

Competition is encouraged with all Grantee selections. On the Grant Contract's cover sheet, the Grantor State Agency shall identify whether the Grantee selection process was competitive or non-competitive. For a non-competitive selection, the Grantor State Agency shall provide reasons for the non-competitive selection. For a competitive selection, the Grantor State Agency shall provide a summary of the Grantee selection process to the Central Procurement Office.

For any contracts that include any federal grant funds, all non-Federal entities receiving such grant funds must comply with all requirements of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326.

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**CENTRAL PROCUREMENT OFFICE  
POLICY NUMBER 2013-007, *GRANT  
MANAGEMENT AND SUBRECIPIENT  
MONITORING POLICY AND  
PROCEDURES*, SECTION 4, GRANTEE  
SELECTION PROCESS –  
INCORPORATION OF PROCUREMENT  
STANDARDS, 2 C.F.R §§ 200.317 TO  
200.326**

**CLEAN VERSION**

**REQUEST: Revise Section 4 of the *Central Procurement Office Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007* as follows:**

**4. Grantee Selection Process.**

Competition is encouraged with all Grantee selections. On the Grant Contract's cover sheet, the Grantor State Agency shall identify whether the Grantee selection process was competitive or non-competitive. For a non-competitive selection, the Grantor State Agency shall provide reasons for the non-competitive selection. For a competitive selection, the Grantor State Agency shall provide a summary of the Grantee selection process to the Central Procurement Office.

For any contracts that include any federal grant funds, all non-Federal entities receiving such grant funds must comply with all requirements of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326.