



STATE OF TENNESSEE
PROCUREMENT COMMISSION
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- AGENDA -

PROCUREMENT COMMISSION MEETING #028
THURSDAY, DECEMBER 14, 2017 - 3:00 P.M.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM

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LARRY B. MARTIN, Chairman
 Commissioner of Finance & Administration

JUSTIN P. WILSON
 Comptroller of the Treasury

ROBERT E. OGLESBY
 Commissioner of General Services

MICHAEL F. PERRY
 Chief Procurement Officer

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VII.	Adjournment	--

**MINUTES OF AUGUST 17, 2017
MEETING**



**MINUTES
PROCUREMENT COMMISSION MEETING #027
THURSDAY, AUGUST 17, 2017 - 2:00 P.M.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM**

Members in Attendance:

Larry B. Martin, Commissioner, Department of Finance and Administration; Justin P. Wilson, Comptroller of the Treasury; Robert E. Oglesby, Commissioner, Department of General Services; Mike Perry, Chief Procurement Officer

Others in Attendance:

Bryan Chriske, Thad Watkins, Don Ivancic, Buddy Lea, Trey Norris, Meryl McVicker, Tim Drown, Brian Hawkins, Alex Komisar, Chris Salita, Rachel Hellewell, Daniel Leeson, Brittany Davis, Maggie Wilson, Cooper Gallimore, Laura Kinard, Paul Krivacka, Charlotte McKinney

I. Call to Order.

Commissioner Martin called the meeting to order and recognized that a quorum of Procurement Commission ("Commission") members was present.

II. Minutes from the June 27, 2017 Procurement Commission Meeting.

Commissioner Martin presented the June 27, 2017, minutes for approval and asked if there were any corrections or additions. Comptroller Wilson stated that the minutes had been reviewed by his office and appeared to be in order. Comptroller Wilson made a motion to approve the minutes from the June 27, 2017, Procurement Commission meeting as presented. Commissioner Oglesby agreed that the minutes appeared to be in order and seconded the motion; whereupon the minutes were approved.

New Business:

III. Proposed Changes to the following Central Procurement Office documents.

Commissioner Martin asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the New Business agenda items.

Mr. Krivacka stated that he would like to begin by presenting some proposed changes to the *Tennessee Procurement Commission ByLaws and Rules of Procedure* ("ByLaws") that do

not appear on the agenda. Mr. Krivacka stated that Procurement Commission members received a copy of the proposed changes to the ByLaws via email prior to the meeting and via hard copy at the meeting. Mr. Krivacka added that the genesis of these changes came from Commissioner Oglesby and his conversations with Commissioner Martin and Comptroller Wilson. The proposed changes will streamline the approval process and adopt some of the practices of other boards and commissions on how they conduct business. Mr. Krivacka explained that the proposal is to adopt a consent agenda similar to that used by the Fiscal Review Committee. The Fiscal Review Committee reviews items such as renewals, extensions of contracts, price increases and decreases, or items that do not rise to the level of approval of an actual contract or an amendment to a contract. Mr. Krivacka continued that the proposal would be to implement a similar process that the Procurement Commission would adopt through changes to its ByLaws. The proposal would allow certain items that receive the unanimous consent of the Procurement Commission Staff to appear on a Procurement Commission consent agenda. These items would be mostly housekeeping in nature and would be things such as clarifying language to an existing policy or procedure. Mr. Krivacka stated that the proposed change would be to Article V of the ByLaws and would read as follows:

“Any documents or issues submitted of a housekeeping nature will be put on the Consent Agenda, after review and approval by Commission staff. Commission members may vote on all items on the Consent Agenda collectively at one time. Members will vote on the Consent Agenda items before moving onto New Business items. Any member of the Commission may unilaterally request for an item to be removed from the Consent Agenda, which would then require an individual discussion and vote.”

Mr. Krivacka indicated that during his presentation of the New Business items for the August 17, 2017 meeting agenda, he would state which ones could possibly meet the criteria to appear on a consent agenda in the future.

(1) Rule Exception Request (“RER”)

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

- This proposal will add a reminder in the instructional text that the limitation of liability request should be used instead of the RER if the request is for proposed changes to the Limitation of Liability template language.
- This proposal will add additional instructions to question # 8 Description of Requested Changes to read in part: “please provide red-lines or track changes to highlight any deviations from template language.” This information will help expedite the review process.
- There has also been a slight formatting change (switch from 2 columns to 1) to help save space on the questions that typically produce longer responses.

Mr. Krivacka indicated that if the third bullet item presented above was the only change, then this item would be an example of something that could appear on a consent agenda.

Comptroller Wilson made a motion to approve the Rule Exception Request ("RER") as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(2) Central Procurement Office Policy Number 2013-009, *Business Conduct and Ethics Policy and Procedures*, Attachment C Annual Attestations

Mr. Krivacka summarized the following points with regard to Central Procurement Office Policy Number 2013-009, *Business Conduct and Ethics Policy and Procedures*, Attachment C Annual Attestations proposal:

- The CPO Risk Manager recently reviewed the *Business Conduct and Ethics Policy* and has suggested changes that can best be described as grammatical and stylistic, which will make the document easier to read.

Again, Mr. Krivacka stated that this is the type item that could appear on a future consent agenda as it does not merit a public discussion.

Comptroller Wilson made a motion to approve Central Procurement Office Policy Number 2013-009, *Business Conduct and Ethics Policy and Procedures*, Attachment C Annual Attestations as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(3) Request for Proposals ("RFP") Template – Option – Audited Financial Statements

Mr. Krivacka summarized the following points with regard to the Request for Proposals ("RFP") Template – Option – Audited Financial Statements proposal:

- This proposal will extend the audit period to within the last 36 months and removes the requirement that the State have a Certified Public Accountant ("CPA") review the Respondent's financial statements.
- The requirement for review by a CPA is legacy language that heretofore had escaped review. In practice, a CPA is not used to review respondent financial statements.
- The role of the CPO Risk Manager is to be available if there are questions about the interpretation of financial statements, risk factors associated with award of a contract, or allowing a respondent to participate in a procurement.

Seeing no discussion, Comptroller Wilson made a motion to approve Request for Proposals ("RFP") Template – Option – Audited Financial Statements as presented. Commissioner Oglesby seconded the motion; whereupon the item was approved.

(4) Procurement Procedures Manual of the Central Procurement Office, Section 5.15.3.3., Click-Wrap Agreements

Mr. Krivacka summarized the following points with regard to the *Procurement Procedures Manual of the Central Procurement Office ("Procedures Manual")*, Section 5.15.3.3., Click-Wrap Agreements proposal:

- This proposed revision to the Procedures Manual serves to further clarify and help confirm that if a State employee enters into a Click-wrap Agreement without authority and without approval of both the CPO and Strategic Technology Solutions (“STS”) then the agreement shall be considered non-binding upon the State. This is based in agency law and is a further clarification of existing policy which is that an employee only has authority to enter a click wrap agreement if they follow the procedures set forth in CPO rules, policies, and procedures. An employee does not have the authority to enter into a click-wrap agreement that is binding upon the State if it is done outside of the rules, policies, and procedures of the CPO.
- CPO procedures require a Click-Wrap Agreement Review Request form that must be approved by the CPO. The CPO must make an attempt to negotiate terms and conditions consistent with Tennessee Law. If an agreement is not reached or there is no response, the CPO will send a Letter of Adhesion which will provide the State with some colorable defense in a court of law in the event the State has no choice but to agree to something that violates Tennessee law. If CPO procedures are not followed, as a principle of agency law, the State would not be bound to terms and conditions agreed to outside of CPO rules, policies, and procedures.

Seeing no additional discussion, Comptroller Wilson made a motion to approve the *Procurement Procedures Manual of the Central Procurement Office*, Section 5.15.3.3., Click-Wrap Agreements as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(5) Procurement Procedures Manual of the Central Procurement Office, Section 10.11, State Security Confidential Information

Mr. Krivacka presented the following points with regard to the *Procurement Procedures Manual of the Central Procurement Office*, Section 10.11, State Security Confidential Information proposal:

- This proposal will align the Procedures Manual language with recent legislation that amended Tenn. Code Ann. § 10-7-504(i). The language being added will now provide that:
 - the identity of a vendor that provides goods and services used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or citizen information to the State shall be confidential.
- The proposed change to the Procedures Manual also adds more specific details about how a procurement professional should identify in the Edison record that a contract is Confidential. Entry of this data field is *very important* because it flags the contract as containing confidential information. If there is a future open records act request the CPO can provide a redacted contract, but the flag is used to identify the contract as one that contains confidential information and is subject to the statute.

- This proposal will also add a reminder to procurement professionals to consult with a member of the legal team if there are any questions concerning what is and is not confidential under Tennessee law.

Commissioner Martin made a motion to approve the *Procurement Procedures Manual of the Central Procurement Office*, Section 10.11, State Security Confidential Information as presented. Comptroller Wilson seconded the motion; whereupon the item was approved.

(6) FA Template – Sections D.17 and D.18

Mr. Krivacka presented the following points with regard to the FA Template – Sections D.17 and D.18 proposal:

- This proposal is the result of a recent negotiation which revealed that the use of the word “money” in that provision can be unclear and is somewhat unnecessary.
- This proposal deletes the word “money” from both D.17., Limitation of State’s Liability, and D.18. Limitation of Contractor’s Liability.

Mr. Krivacka indicated that this is a housekeeping item and is another example of something that could appear on a future consent agenda. This item would not normally merit discussion in a meeting.

Seeing no additional discussion, Commissioner Martin made a motion to approve FA Template – Sections D.17 and D.18 as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(7) Special Contract Request (“SCR”)

Mr. Krivacka summarized the following points with regard to the Special Contract Request (“SCR”) proposal:

- This proposal will delete Question #25 “Explanation of Need for or requirement placed on the State to acquire the goods or services.”
- This question is already included as question #18 and is therefore redundant and unnecessary.

Mr. Krivacka stated this is another housekeeping item that could appear on a future consent agenda and does not merit public discussion.

Comptroller Wilson made a motion to approve Special Contract Request (“SCR”) as presented. Commissioner Oglesby seconded the motion; whereupon the item was approved.

(8) Governor’s Office of Diversity Business Enterprise (“Go-DBE”) policy and template changes – Public Chapter 485

Mr. Krivacka summarized the following points with regard to the Governor's Office of Diversity Business Enterprise ("Go-DBE") policy and template changes – Public Chapter 485 proposal:

- Recent legislation added a new category, "businesses owned by persons with disabilities," to the Go-DBE program. The program will now provide assistance to the following five (5) groups:
 - Small businesses and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities.
- The addition of "businesses owned by persons with disabilities" is needed in a number of places including templates, policies, and procedures. This proposal will add "businesses owned by persons with disabilities" to all necessary governing documents.

Comptroller Wilson asked if this change was statutorily required and Mr. Krivacka responded that it was required by statute.

Commissioner Oglesby asked if Mr. Krivacka would define "disabilities" for the record. Mr. Krivacka stated that he did not have the statute readily available but that it would most likely relate to some type of Federal or State definition of when a person is considered disabled. Mr. Thad Watkins, Department of General Services Legal Counsel, stated that the Federal government had recently expanded the definition of "disabilities" in the ADA and asked Mr. Krivacka if this proposal would reflect the expanded definition of disabilities. Mr. Krivacka stated that he believed the proposal would reflect the expanded definition of "disabilities" but would have to refer to the statute and consult with Ms. Shelia Simpson, Director of the Go-DBE program, who was not in attendance at the meeting. Mr. Krivacka stated that he would follow-up on the information with Ms. Simpson after the meeting.

Comptroller Wilson stated that he did not want to expand what the statute requires. Commissioner Oglesby stated that if it could be made to be more convenient and understandable then it would be good to include that language.

Seeing no additional discussion, Comptroller Wilson made a motion to approve Governor's Office of Diversity Business Enterprise ("Go-DBE") policy and template changes – Public Chapter 485 as amended. Commissioner Martin seconded the motion. Commissioner Oglesby stated that we should ensure that the definition conforms to requirements of the Federal government. Comptroller Wilson and Commissioner Martin stated that the definition should conform to Tennessee statute and Mr. Krivacka stated that the proposed change absolutely tracks the changes as a result of the new legislation. Mr. Krivacka continued that the specific definition of "disabilities" in the statute cannot be redefined through the Procurement Commission. Mr. Krivacka indicated that the proposal would already have the Go-DBE program in conformance with Tennessee statute.

Mr. Watkins stated that he was curious since this proposal created a new classification under the Go-DBE program. Mr. Watkins asked that Go-DBE staff report back to the Procurement Commission at the next meeting as far as what type of documentation

businesses would have to submit to qualify because there are advantages of a company being classified as a diversity business enterprise.

Commissioner Martin asked if all the Commission members were comfortable with agenda item (8) as presented. Seeing no additional discussion, the item was approved.

Commissioner Martin thanked Mr. Krivacka for presenting the New Business Agenda items and moved to agenda item.

IV. Reports:

Chief Procurement Officer Perry presented the following standard reports for informational purposes:

- 1) Certification Related Items
- 2) Limitation of Liability – three granted
- 3) Correction of Errors – no report this period
- 4) Memorandum of Understanding

Commissioner Martin asked if there were any questions or comments regarding the reports as presented. Comptroller Wilson asked what the first item on the Limitation of Liability report was about. Mr. Krivacka responded that it adds some language that limits liability with respect to consequential damages, and then it goes on to describe what types of consequential damages and the basis for those consequential damages. Typically when negotiating limitation of liability provisions the State has been known to give away consequential damages and emphasize that the intent is to limit the liability for direct damages, not consequential damages.

Comptroller Wilson indicated that his office had already approved this item but just wanted to get this on the record.

Commissioner Martin noted that the reports had been acknowledged for the record and moved to the next agenda item.

V. Other Business.

Consent to Cancel the July Procurement Commission Meeting:

All members gave their verbal consent to cancel the September 21, 2017 Procurement Commission meeting and noted that the next meeting would be October 19, 2017.

VI. Central Procurement Office Process Update

Chief Procurement Officer Perry stated that the most recent procurement process approved by the Procurement Commission was the Collaborative Value Development ("CVD") process which has been used once on the new facilities management contract that was effective May 26, 2017. At the last Procurement Commission meeting members had asked for a high-level update on the CVD process to include the results obtained,

how it works, lessons learned, and where the process will be used going forward. Mr. Perry introduced Mr. Trey Norris who served as the Solicitation Coordinator for the facilities management procurement and was involved in the CVD workshops, as well as the entire process during development of the contract. Mr. Perry turned the floor over to Mr. Norris and stated that the Commission members were welcome to ask questions at any time during the presentation.

Before Mr. Norris began his presentation Comptroller Wilson asked if the PowerPoint presentation would be posted on the CPO web site. Mr. Perry responded that the presentation could certainly be posted on the CPO web site and mentioned that the presentation was also being streamed live for remote viewing. Comptroller Wilson stated that he would like the presentation to be made public and available to everyone.

Commissioner Martin thanked Mr. Perry and Comptroller Wilson for their comments and turned the floor over to Mr. Norris who presented the attached PowerPoint presentation.

At various points during the presentation by Mr. Norris, the following questions were addressed:

Q1. Comptroller Wilson asked if vendors were pre-qualified before starting the CVD workshops.

A1. Mr. Norris responded that vendors were pre-qualified before starting the CVD workshops through the Request for Qualifications. In this case, the vendors were evaluated on their technical ability and experience with specific facility types that were representative of the State's portfolio.

Comptroller Wilson stated that he had two questions.

Q2. Comptroller Wilson indicated that one of the issues that COT has with contracts is whether the specifications or requirements were determined by the State or by the vendor. How did the CPO deal with that issue as it came up during the CVD process?

A2. Mr. Norris stated that during the CVD workshops, in the CVD policy, and in CPO actions throughout the workshops, it was emphasized that the vendors were all providing input. Each of the qualified vendors that participated in the process had equal opportunity and time for their representatives to provide input that the State would take into consideration for the deliverables that would go into the RFP. It was emphasized that the State would independently be crafting the RFP document and that there may be things that the vendors suggested that the State would choose not to include in the RFP. To ensure that one vendor was not getting more input opportunity over another, the CPO would ask vendors if they thought the process was fair and competitive at the end of each week.

Comptroller Wilson stated that raised his next question.

Q3. Were there private meetings with vendors? Comptroller Wilson stated that the general principle in State procurement is that all information is public to all vendors. How did the CPO deal with that issue?

A3. Mr. Norris responded that at the end of each session (2-3 days per week) the CPO

delivered notes related to all deliverables. In addition the workshop facilitators prepared general notes that might be outside of the deliverables for the CPO to review. Mr. Norris indicated that as an example they discussed the "elephants in the room" - was there anything that would preclude them from bidding on the RFP. Those notes were delivered to each of the vendors to see if they had any changes or if they thought something in the notes was unfair or did not accurately reflect what was discussed in the room so that it could be discussed at the next workshop session.

Q4. Comptroller Wilson asked if all three vendors were satisfied with the incentives. Comptroller Wilson added that all three vendors were comparable and all had a general understanding of what the incentives were and if they were fair to each one of them.

A4. Mr. Norris responded that the vendors were satisfied with the incentives. Mr. Norris indicated that incentives were discussed very early on in the workshops. The State wanted vendors to propose their incentives and gave them a chance to suggest some. Mr. Norris continued that it was mentioned to vendors that the non-monetary incentive of earning contract "renewal options" was one that would be included by the State. The CPO gave vendors the chance to propose additional incentives as part of their solution. The CPO provided "guardrails" of the types of incentives that based on statute or otherwise the State could or could not accept. The State did not guarantee that it would accept any incentive proposed by the vendors, as that was part of the final negotiation process.

Q5. Comptroller Wilson asked if Mr. Norris would be addressing how the evaluations were done.

A5. Mr. Norris indicated that he did not include how the evaluations were done as part of the slides but he would be happy to address how the RFP was evaluated.

Mr. Norris stated that during both the RFQ and RFP process oral presentations were part of the evaluation. Much of the evaluation was on the technical response section or the vendor's ability to deliver based on different questions from the RFQ. The State evaluated quantitatively the cost model by doing five site visits with all three vendors. With a procurement as complicated and as varying in terms of needs and diverse requirements as facilities management, the site visits were needed in order for the vendors to provide firm costs. The State obtained costs under different scenarios - such as if one site was only being used, if 20 million square feet was being used, and if all five sites were being used to show the economy of scale as usage increased in the contract.

Q6. Comptroller Wilson asked if evaluators were involved in any of the negotiations or were the negotiations completely independent.

A6. Mr. Norris responded that the evaluators were not involved in the negotiations. Mr. Norris continued that all the evaluators had some sort of facilities management knowledge; two evaluators were from procurement, two were business officers/CFOs, and two were facility directors.

Q7. Comptroller Wilson asked if all the evaluators were State employees.

A7. Mr. Norris responded that all the evaluators were State employees.

Comptroller Wilson stated that under lessons learned that the State should be sure to

get the Bond Counsel involved early in the process if the procurement is one that would require their approval. Mr. Norris agreed.

Q8. Comptroller Wilson asked if there are any existing statutes that we have now in Tennessee that impede this process except those designed for fairness, transparency, and competitiveness. Are there any technical statutes that impede the process?

A8: Mr. Norris indicated that he was not qualified to respond to that question. Mr. Paul Krivacka responded that the statutes that deal with best value procurements, RFPs, etc. are sufficiently broad to allow for the CVD process. This is basically a multi-step procurement process that involves a RFQ as an authorized procurement method, a workshop, and then a RFP at the end. Mr. Krivacka stated that Comptroller Wilson brought up some very good points, such as how do we prevent the asymmetry of information; meaning that because of the one-on-one workshops is one vendor getting better information than everyone else. Mr. Norris stated in his presentation that the workshop information/notes were compiled and disseminated to all attendees. Mr. Krivacka noted that about two years ago there was a protest by IBM and one of the reasons the Protest Committee decided to reverse the award to HP was because of asymmetry of information. It was felt that because of the way the procurement was conducted that IBM had less valuable information than did HP. Mr. Krivacka stated that the CPO will make sure going forward that equal information is provided to everyone involved in the process, just as it was on the facilities management procurement. Mr. Norris confirmed that in the one-on-one breakouts all questions were compiled just as would be done in a written questions and comments period used in a RFP.

Commissioner Martin asked if there were any other questions and stated that the presentation and discussion had been very thorough. Commissioner Martin asked where it would be beneficial to share this information. Commissioner Martin stated he had just asked Commissioner Oglesby if the CFG Cabinet meeting would be an appropriate place to share this presentation and Commissioner Oglesby agreed. Commissioner Martin stated that the Finance Chairs had been informed about the meeting today and advised that the presentation would be available to watch via streaming. Mr. Perry stated that he would be making a "procurement 101" type presentation to the Fiscal Review Committee ("FRC") on September 13, 2017 that would be primarily for new FRC members and he could include some information about the CVD process. Comptroller Wilson agreed that it would be good for Mr. Perry to include information on the CVD process in his presentation to FRC. Mr. Perry added that the CVD Process was submitted to the National Association of State Procurement Officials ("NASPO") for the CRONIN Award which is an award given for procurement excellence and innovation each year. Mr. Perry stated that the CPO has been notified that the CVD Process submission has been selected as one of the top five finalists of all the nominations submitted from all states. Mr. Perry added that there has been a lot of interest from other states regarding the CVD process and the CPO has received numerous inquiries from other state about how they could possibly replicate the CVD process.

Comptroller Wilson stated that he may not have been clear when asking his previous question about any existing laws that could impede the CVD process. Comptroller Wilson clarified that he was not asking whether or not the existing facilities management

contract complied with existing law but wanted to know if there was a different contract or process that was more effective or more efficient if not for hindrances in existing law, which is a different question. Mr. Krivacka responded that if representatives from the University of Tennessee ("UT") were asked about their process and how they have used it in the past they would probably respond that they had some slightly different constraints because of existing law, but Mr. Krivacka stated that he did not believe those were material constraints. Mr. Perry added that very few changes had to be made from a policy standpoint in order to adapt the vested process to fit into the parameters of the CPO. Mr. Perry noted that as Mr. Norris alluded to, the main difference is that the vested process focuses more on the one-on-one conversations with the ultimate winner. The State chose to apply it at the solicitation level in the interest of fairness and competition and probably put a great deal more transparency in the process to really work in the CPO model. Mr. Perry indicated that other than that, the basic principles held true throughout the process.

Seeing no other comments or questions, Commissioner Martin thanked Mr. Norris for his good work on the presentation.

VII. Adjournment

Seeing no other business to be heard, a motion to adjourn was made by Comptroller Wilson and seconded by Commissioner Oglesby; whereupon the August 17, 2017 Procurement Commission meeting was adjourned.

CVD SLIDE PRESENTATION



Collaborative Value Development (CVD) Process

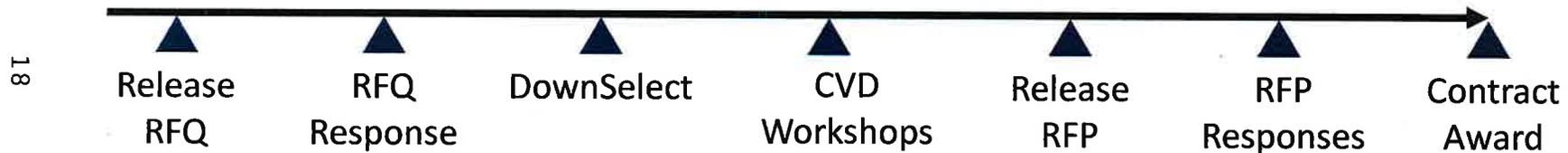
August 17, 2017

Order of Presentation

- Creating the Collaborative Value Development Process
- CVD Pilot Procurement Framework
- Benefits of the CVD Process
- Results of the Pilot Procurement
- ¹⁷• Candidate Procurements for CVD
- Potential Components of CVD for Future Use
- Lessons Learned and Takeaways

CVD Process – What's Different?

- Collaborative Value Development Process
 - Vested® process adapted to State CPO procedures
- Involvement of representatives from down-selected vendors participating in collaborative CVD Workshops to provide inputs that the State team can use to develop the RFP



- Focus on minimizing risk and including incentives in the contract designed to drive vendor to create and deliver additional value to the State throughout the contract.

CVD Pilot Procurement Overview

- Facilities Management Core Team created RFQ
 - Representing CPO, STREAM, CFG, UT, TBR
- Down-selected to three qualified vendors
- Vendors and State collaborated through workshops to discuss and develop the unique constraints and opportunities for the RFP on which the vendors would ultimately bid.
- Single vendor selected, and joint governance team formed to align with entities

Overview of the Journey

	25-Aug	8-Sep	15-Sep	22-Sep	29-Sep	6-Oct	13-Oct	20-Oct	27-Oct	3-Nov	7-Nov	14-Nov	21-Nov	28-Nov
20	Modules 1-4	An introduction to Vested, the courseware, and the process we will follow												
	Module 5-7	Review Deliverables 1-4 and create Requirements Roadmap												
	Modules 8-12	Review Requirements Roadmap and create Pricing Model												
	Module 13	Review Pricing Model and create Governance												
	Rev & Plan	Review any outstanding issues & plan Breakout Sessions												
	Breakout #1													
	Breakout #2													
	Create RFP	State begins prep of RFP												
	Preliminary Solutions	Qualified Respondents continue solutioning												
	Review	Final Review of Vested Deliverables /												
	Finalize RFP													
	Continue Solutions													
											RFP to COT			Issue RFP

Date shown on Calendar is a Thursday (thru 11/3 - last 4 columns are Mondays)

Workshops will be Thursdays & Fridays from 8:30AM - 4:30PM

There will be no Workshops on the Thurs-Fri prior to Labor Day



What's in it for the Parties?

What's in it for the Vendors?

- A chance to better understand the State's needs
- An opportunity to have input into the final requirements, allowing the Vendors to respond with an optimal solution for both parties
 - Opportunity to meet one-on-one with State

What's in it for the State?

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- Gain knowledge from the vendors to assist the State with defining the cost model and other requirements
- Help the State understand industry best practices, and formulate the requirements that will ultimately be incorporated into the RFP
- Better competition and resulting solutions

Mutual Benefits

By Focusing on intended results, not activities...

- Risk and reward are shared to align interests
- Mutually beneficial, shared incentives drive innovation and cost effectiveness
- Mutually agreed Desired Outcomes create buy-in and focus on meeting goals and objectives
- Total Cost of Ownership emphasis enables sustainable results beyond bottom-line initial price “reduction”
- Flexible Framework to enable changes “as business happens”

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Resulting Contract from pilot CVD procurement

- The State signed a 5 year facilities management contract focused on providing the best service at the lowest possible cost for taxpayers.
- Key features include:
 - Flexibility: master contract allows individual state entities the choice to utilize some or all of the services provided
 - Transparency: cost pass through contract with no markups
 - Incentives: Vendor puts their management fee at risk of meeting performance objectives, can share State savings and earn five possible one-year term extensions (beginning in year 2)

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Candidates for CVD

- Large, High \$ Value
- Complex Subject Matter that may not be a core competency of the State
 - If in-house expertise is insufficient or unable to fully develop contract inputs such as scope and cost model.
- Potential candidates
 - Supply-Chain Management and Logistics
 - Design-Build Projects
 - IT Systems (such as healthcare & benefits systems)

Potential Components of CVD for Future Use

- Finding effective ways to utilize and gain from expertise of private sector during scope and cost model development. Some best practices:
 - More vendor involvement on the front end than just the typical formal State Pre-Response Conference & RFI process.
 - Targeted questions to drive vendor input early on
 - Emphasizing “drivers” behind State requirements
- 25 • Use a shortened version of the workshops to compare State’s existing service delivery with best practices in private sector.
- Incentives to mitigate vendor’s risk and motivate

Lessons Learned and Takeaways

- Increased Insight and vendor involvement leads to Buy-In & Better Competition
 - More State emphasis on explaining drivers behind requirements.
- Transparency and Knowledge Transfer is critical
- Entire CVD process should be used sparingly
- Public Sector constraints prevent a true Vested relationship (but we got closer than we thought)
 - Contract contained more boilerplate language than a normal Vested contract.
- Vendors love the process, when it makes sense financially
 - Losing Respondents wished for the contract to be successful and format adopted by other public entities.

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Conclusion

Questions?

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TN

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**TENNESSEE PROCUREMENT
COMMISSION BYLAWS AND RULES OF
PROCEDURE**

TENNESSEE PROCUREMENT COMMISSION

BYLAWS AND RULES OF PROCEDURE

6/28/2012

AMENDMENT 1: ARTICLES V AND XV AMENDED ON 1/31/13

AMENDMENT 2: ARTICLE XIV AMENDED ON 2/20/14

AMENDMENT 3: ARTICLE V AMENDED ON **DATE**

MISSION STATEMENT

To promote the efficient, fair, transparent, timely, and cost-effective procurement of goods and services and ensure proper management of contracts between proposers and the various departments, agencies, and commissions of the State of Tennessee with respect to procurement decisions.

ARTICLE I

NAME

The name of this organization shall be referred to herein as the “Tennessee Procurement Commission” or the “Commission.”

ARTICLE II

DUTIES AND RESPONSIBILITIES

The Commission shall have the duty and responsibility to review, comment, and approve rules and regulations, policies, standards, and procedures to be followed consistent with Title 4, Chapter 56 and Title 12, Chapters 3 and 4, and such other duties and responsibilities assigned to the Commission by the Tennessee General Assembly. The Commission shall also recommend changes to rules and regulations, policies, standards, and procedures governing the procurement of goods and services, contracting, agency contract and grant management, training and professional development, and disposal of goods and services by the State of Tennessee.

The Commission is further authorized to promulgate necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, Title 4, Chapter 5, as well as policies and procedures to implement its duties and responsibilities under Title 4, Chapter 56 of the Tennessee Code. The Commission shall not exercise authority over the award or administration of any particular contract or grant.

ARTICLE III

DOCUMENT GOVERNING PROCEEDINGS

These Bylaws and Rules of Procedure, referred to herein as the "Procedures", shall govern all hearings, information items and matters for consideration or approval before the Commission.

ARTICLE IV

RECORD OF PROCEEDINGS

The Chief Procurement Officer shall keep a permanent and accurate record of all proceedings of the Commission.

ARTICLE V

FILING

All documents to be filed with the Commission for consideration or approval must be filed with and received by the Chief Procurement Officer at least fifteen (15) calendar days in advance of a Commission meeting by no later than 4:00 PM CST. Electronic filing by email with return receipt requested is recommended, but not required.

Any documents or issues submitted of a housekeeping nature will be put on the Consent Agenda, after review and approval by Commission staff. Commission members may vote on all items on the Consent Agenda collectively at one time. Members will vote on the Consent Agenda items before moving onto New Business items. Any member of the Commission may unilaterally request for an item to be removed from the Consent Agenda, which would then require an individual discussion and vote.

All documents, including Consent Agenda items, will be provided by the Chief Procurement Officer to Commission members and staff at least ten (10) calendar days in advance of a Commission meeting no later than 4:00 PM CST.

ARTICLE VI

MEMBERS OF THE PROCUREMENT COMMISSION

The members of the Procurement Commission shall consist of the commissioners of General Services, Finance and Administration, and the Comptroller of the Treasury. The Chief Procurement Officer shall serve as a non-voting member.

ARTICLE VII

OFFICERS

The officers of the Commission shall consist of a Chairperson, Vice-chairperson, and Secretary. The Governor shall appoint the Chairperson. The voting members of the Commission shall elect a Vice-chairperson. The Chief Procurement Officer, as a non-voting member, shall serve as Secretary to the Commission. The terms of office shall begin on April 1 of each year and end March 31 of the following year.

ARTICLE VIII

LEGAL COUNSEL

The Attorney General and Reporter shall serve as legal counsel to the Commission in accordance with the requirements of Tenn. Code Ann. § 8-6-301.

ARTICLE IX

MEETINGS, PUBLIC HEARINGS, QUORUMS, AND VOTING

A. The Commission shall meet as frequently as required for the purpose of electing officers and conducting other appropriate business.

B. Regular meetings of the Commission shall be held the third Thursday of each month at such time and place as designated by the Chairperson after consultation with the other members, except that the regular meeting in November shall be held on the second Thursday. Should the third Thursday fall on a federal or state holiday, the regular meeting of the Commission will be held on the second Thursday of the month. One member may appear at meetings telephonically if notice is provided to the other two members at least three (3) business

days prior to such meeting and provided the other two members are present for the meeting. A regular meeting may be cancelled or rescheduled by the Chairperson after consultation and written consent with all members. Special meetings of the Commission may be called by the Chairperson, provided the Chairperson gives the other members and the public at least three (3) business days notice.

C. At all meetings, a majority of members, being two (2), shall constitute a quorum for action only upon consent by all members after reviewing the agenda. A majority vote of the quorum shall constitute the action of the Commission.

D. All meetings of the Commission shall be recorded and minutes of the Commission shall be in writing and presented for approval or correction by the Commission at its next meeting subsequent to the meeting in which the action was taken. All meetings to the extent possible will be video taped and accessible for future reference. Agendas and minutes shall be posted on the Central Procurement Office website from a link on the home page of the Central Procurement Office internet site to promote transparency.

ARTICLE X

DUTIES OF CHAIRPERSON

The Chairperson shall be the principal officer of the Commission. The Chairperson shall:

- A. Preside at meetings of the Commission;
- B. Create standing and special committees as needed, upon majority approval of the other voting members, and appoint committee members;
- C. Be an ex-officio member of all committees;
- D. Send notices of meetings to the other members and to the members of the public;
- E. Establish agenda for meeting in consultation with the staff of Commission members;
- F. Ensure the objectives of the Commission are met;
- G. Perform such other duties as are appropriate to the office.

ARTICLE XI

DUTIES OF VICE-CHAIRPERSON

The Vice-chairperson shall:

- A. Perform the duties of the in the absence of the Chairperson;
- B. Serve in such capacities as may be assigned by the Chairperson;
- C. Perform such other duties as are appropriate to the office.

ARTICLE XII

DUTIES OF THE SECRETARY

The Chief Procurement Officer, a non-voting member of the Commission, shall serve as Secretary and shall:

- A. Certify and authenticate minutes and other documents relating to the business of the Commission;
- B. Provide minutes to the Commission members for approval or correction;
- C. Perform such other duties as are appropriate to the office;
- D. Establish the draft agenda for the Chair to consult with all members;
- E. Maintain all records and recordings of the meetings.

ARTICLE XIII

COMMITTEES

Committees, standing or special, shall be appointed by the Chairperson with majority consent of the other voting Commission members. The Chairperson shall be an ex-officio member of all committees.

ARTICLE XIV
COMMUNICATION, NOTICE, PUBLICATION,
AND CORRECTION OF ERRORS

Communication and notice may be accomplished through the Central Procurement Office website, e-mails, announcements, newsletters, or other methods. The Chief Procurement Officer, in consultation with the Chairperson, shall be responsible for collecting information and producing a “Final Copy” of the communication ready for posting on the Central Procurement Office website or for distribution via other methods. Final Copy is defined as the communication that has been edited for proper grammar, accuracy, and overall clarity and quality, including any final pictures or graphics to be attached. The Procurement Commission authorizes Procurement Commission Staff to correct obvious typographical or clerical errors that are discovered after a model, template, policy, or other item has been approved for publication on the Central Procurement Office website by the Procurement Commission, provided the error is insubstantial. By way of example only, misspelled words, incorrect acronyms, capitalization, punctuation, incorrect page numbers or references, misaligned formatting, and the like are insubstantial errors that may be corrected by Procurement Commission Staff. All corrections of insubstantial errors by Procurement Commission Staff shall be reported to the Procurement Commission.

ARTICLE XV
COMMISSION STAFF

The Commission’s staff shall consist of the Chief Procurement Officer, staff of the Central Procurement Office as designated by the Chief Procurement Officer, and such other staff as designated by each Commission member.

ARTICLE XVI

SUSPENSION OF PROCEDURES

Any provision of these Procedures may be suspended upon a unanimous vote of the voting members of the Commission at a Regular or Special Meeting without the necessity of an amendment to these Procedures.

ARTICLE XVII

AMENDMENTS

These Procedures may be amended at any Regular or Special Meeting of the Commission by a unanimous vote of the voting members of the Commission.

Effective _____

**CLICK-WRAP AGREEMENT APPROVAL
REQUEST**

Click-wrap Agreement Approval Request

Procurement professionals should use this document to seek approval to enter into or renew a click-wrap agreement associated with a proposed purchase made under an Agency’s small purchase authority. This Request will typically be utilized for licenses of software, internet-based services or computer services. See sections 4.1. and 5.15.3.3. of the *Procurement Procedures Manual of the Central Procurement Office* for more information about click-wrap agreements. THIS DOCUMENT CANNOT BE USED TO MODIFY AN EXISTING CONTRACT, EVEN A CONTRACT EXECUTED UNDER AN AGENCY’S SMALL PURCHASE AUTHORITY. A Special Contract Request may not be required for any agreement with a total dollar value under the small purchase authority threshold. For new click-wrap agreements, send a copy of the proposed click-wrap agreement, the quote you were provided (if applicable), and a completed Click-wrap Agreement Approval Request in PDF format to Agsprs.agsprs@tn.gov. If this is a renewal, please also include a copy of the previously approved click-wrap agreement. Approved Click-Wrap Agreement Requests and supporting documents must be maintained with the procurement file.

APPROVED*	APPROVED
CENTRAL PROCUREMENT OFFICE	STRATEGIC TECHNOLOGY SOLUTIONS
DATE	DATE

*If CPO provides you with a State negotiated Contract, CPO’s approval is contingent upon their receipt of an Agency countersigned copy. The Agency signatory must have signing authority. Please sign and: (1) send directly to the Contractor at the email address CPO provides to you; (2) send to Agsprs.agsprs@tn.gov so that CPO may retain a copy for their records; (3) retain a copy for your records; and (4) upload a copy of the signed Contract and this Click Wrap Approval Request document into Edison.

If a letter of adhesion is sent and the contract is not negotiated then upload a copy of the letter of adhesion (this will contain “Letter of Adhesion” in the filename), the original terms and conditions, and this Click Wrap Approval Request document into Edison. In the event that the proposed Click Wrap Agreement Request is stamped DENIED an accompanying explanation will be provided in the box labelled “Denial Explanation” located at the bottom of this form, which may contain additional instructions.

Agency Tracking #	
1. Procuring Agency	
2. Agency Contact (Include name, email address and phone number)	
3. Contractor Name and ID # (Also include both the developer and the reseller if obtaining via a third party)	
4. Contractor Contact (Include name and email address to where proposed changes can be sent. If buying from a reseller, please provide the reseller contact information.)	
5. Click-wrap agreement’s proposed Effective Date (This is the anticipated date for entering into the click-wrap agreement.)	
6. Click-wrap agreement’s proposed End Date	
7. Name and description of goods or services (Please be specific, i.e. what the product will be used for, whether anything will be downloaded onto State servers or whether data will be transmitted to third parties).	

<p>8. Are these goods or services currently available on a statewide or agency term contract? If YES, please explain why the current contract is not being used for this procurement.</p>	<p><input type="checkbox"/> NO <input type="checkbox"/> YES,</p>
<p>9. Maximum Contract Cost – with ALL options to extend exercised. Note: the Click-Wrap Approval process shall not be used if the Maximum Contract Cost is over \$10,000.</p>	<p>\$</p>
<p>10. Sensitive Data Involvement - If none, select N/A. If yes, please provide the type of data involved (e.g., HIPAA, Payment Card Industry (PCI), Federal Tax Information (FTI), Family Educational Rights and Privacy Act (FERPA), Federal Information Security Management Act (FISMA), Criminal Justice Information Services (CJIS), Center for Medicare and Medicaid (CMS), Social Security Administration (SSA), or Personally Identifiable Information (PII)).</p>	<p><input type="checkbox"/> N/A <input type="checkbox"/> YES,</p>
<p>11. Additional STS Approvals – Please identify any STS Endorsements or Exception Requests that have been submitted for this product/service. If this does not apply to your request, please leave blank.</p>	<p>(1) Endorsement or Exception Request #</p> <p>(2) Date submitted</p> <p>(3) Current Status (circle one) [Planned] [In Progress] [Completed]</p>

For Renewals Only

<p>Confirm that there is a valid renewal option remaining in the contract and confirm that there has been no other change to the agreement's terms and conditions. – If there is not a valid renewal or extension option remaining in the agreement, submit as a new click-wrap agreement or contract instead. (Note: the term cannot exceed sixty (60) months without an approved Rule Exception Request and Contract Amendment.)</p>	<p>Confirm that all necessary due diligence has been performed and it is in the State's best interest to renew or extend the contract. – Considering such items as contractor performance, pricing, etc.</p>	<p>Confirm this renewal or extension does not increase the total dollar value above amounts approved for local purchase authority.</p>
<p>YES <input type="checkbox"/></p>	<p>YES <input type="checkbox"/></p>	<p>YES <input type="checkbox"/></p>

Denial Explanation (for CPO/STS use only)

LIMITATION OF CONTRACTOR'S LIABILITY REQUEST

Limitation of Contractor's Liability Request

Any change to the template language regarding the Limitation of Contractor's Liability shall be submitted using this Limitation of Contractor's Liability Request and must be in accordance with Tenn. Code Ann. §12-3-701. Approval of the Chief Procurement Officer and the Comptroller of the Treasury is required if the proposed limitation of contractor liability is an amount less than two (2) times the maximum liability, estimated liability, or maximum revenue of a contract. Approval of the Chief Procurement Officer is required if the proposed limitation of contractor liability is an amount greater than two (2) times the maximum liability, estimated liability, or maximum revenue of a contract.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

NOTE: Any request to replace or alter the Limitation of State's Liability language in a State contract shall be made with a Rule Exception Request (RER) and not with this Limitation of Contractor's Liability Request.

APPROVED	APPROVED
CHIEF PROCUREMENT OFFICER	DATE
	COMPTROLLER OF THE TREASURY (only for <2 times) DATE

Request Tracking #	
1. Contracting Agency	
2. Solicitation or Contract #	
3. Requestor Contact Information – name, e-mail address & telephone #	
4. Proposed Contract Period –with ALL options to extend exercised	months
5. Anticipated Contract Maximum Liability, Estimated Liability or Maximum Revenue – with ALL options to extend exercised	\$
<p>6. Approval of this request will permit a limitation of contractor liability by means of the following contract provision.</p> <p>D.#. <u>Limitation of Contractor's Liability</u>. 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 () times the [Maximum Liability, Estimated Liability, or Maximum Revenue] amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.</p>	

Request Tracking #	
7. Goods or Services Description – <i>brief summary only– do NOT restate the proposed scope of service</i>	
8. Potential Risks of Liability to the State Resulting from the Procurement	
9. Anticipated Impact of Proposed Limitation of Liability on the State	
10. Justification	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	

RULE EXCEPTION REQUEST (“RER”) TEMPLATE

Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the “necessary contract clauses” identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 (“CPO Rule 17”). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: Agsprs.Agsprs@tn.gov All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17’s necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury. Note: Any change to the template language regarding the Limitation of Contractor’s Liability shall be submitted using the Limitation of Contractor’s Liability Request.

APPROVED

CHIEF PROCUREMENT OFFICER

APPROVED

COMPTROLLER OF THE TREASURY

Agency request tracking #	
1. Procuring Agency	
2. Edison contract ID #	
3. Contractor or Grantee	
4. Contract’s Effective Date	
5. Contract or grant contract’s Term (with ALL options to extend exercised)	months
6. Contract’s Maximum Liability (with ALL options to extend exercised)	\$
7. Citation and explanation of the rule(s) for which the exception is requested	
8. Description of requested changes If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.	
9. Justification	
Signature of Agency head or designee and date	

**CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2013-004, *CONTRACT
MANAGEMENT POLICY AND
PROCEDURES*, SECTION 5.3.2,
LIMITATIONS OF LIABILITY**

Clean:

5.3.2. Limitations of Contractor's Liability.

All limitations of Contractor's liability must comply with Tenn. Code Ann. § 12-3-701 and Central Procurement Office Policy. Limitations of liability that do not comply with Tenn. Code Ann. § 12-3-701 and Central Procurement Office Policy are prohibited. Contractual provisions limiting a Contractor's liability for the following are prohibited:

- Liability for intellectual property or to any other liability, including, without limitation, indemnification obligations for infringement of third-party intellectual property rights;
- Claims covered by any specific provision in a contract with the state providing for liquidated damages; or
- Claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or deaths.

Contractual provisions that limit a Contractor's liability to an amount less than two (2) times the value of the contract (i.e., maximum liability, estimated liability, or maximum revenue) are subject to approval by the Chief Procurement Officer and are otherwise prohibited without the Chief Procurement Officer's and the Comptroller of the Treasury's approval. The Chief Procurement Officer must make a finding that limiting a Contracting Party's liability to less than two (2) times the value of the contract is in the best interests of the State. The Chief Procurement Officer is also authorized to approve a limitation of liability amount greater than two (2) times the maximum liability, estimated liability, or maximum revenue of a contract if the chief procurement officer determines that an increase in the liability amount is necessary to protect the state's best interests.

**INTERAGENCY AGREEMENT – GRANT
MODEL (“IG”), E.#. FERPA**

REQUEST: **Revise the Interagency Agreement – Grant (IG) Model, optional language 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 LOCAL OR FEDERAL
GOVERNMENT (“GU”) MODEL**

REQUEST: Revise the Records clause and add the Iran Divestment Act contract clause for the Tennessee Local or Federal Government (GU) Model as follows:

D.8. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.21. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

CONTRACT TERMINATION REQUEST

Contract Termination Request

If the procuring State Agency determines that early termination of a contract is in the State's best interest, either for cause or convenience, then the State Agency head, or his or her designee, shall obtain the Chief Procurement Officer's approval to terminate the contract. The procuring State Agency shall notify the Contractor of the contract's termination only after it has obtained the Chief Procurement Officer's approval. Route the completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	
1. Procuring Agency	
2. Contractor	
3. Edison contract ID #	
4. Agency contact information – name, e-mail address, and telephone #	
5. Contract's Effective Date	
6. Contract's end date	
7. Requested termination date	
8. Contractual Basis for Early Termination – <i>select termination option that will be exercised and confirm notice will be sent in accordance with any notice requirements included in the Contract terms.</i>	<input type="checkbox"/> Termination for Cause <input type="checkbox"/> Termination for Convenience <input type="checkbox"/> Subject to Funds Availability <input type="checkbox"/> YES - Confirm that the written notice of termination will be sent to the Contractor in accordance with any notice requirements included in the Contract terms.
9. Justification	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	

CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2015-010, *STATEWIDE*
PURCHASING CARD POLICY AND
PROCEDURES

REQUEST: Revise Policy Number 2015-010, Central Procurement Office Statewide Purchasing Card Policy and Procedures as follows:

5.3. State Agency P-Card Program Coordinator.

The State Agency P-Card Program Coordinator serves as the main point-of-contact between the State Agency and the Statewide P-Card Program Administration Team.

The State Agency must provide the Statewide P-Card Program Administrator written notice within five (5) business days of any changes in status of the State Agency P-Card Program Coordinator.

The State Agency P-Card Program Coordinator's role, duties, and responsibilities include:

- Completing training through the Statewide P-Card Program Administration Team;
- Signing the State Agency P-Card Program Coordinator designation form;
- Collaborating with the Agency's Fiscal Director to develop and maintain the State Agency's internal P-Card Procedures to address policy areas unique to the State Agency or that are not covered by this Policy, as applicable;
- Working with State Agency management to identify job titles, positions, or Edison roles that require use of a P-Card or Virtual P-Card;
- Working with State Agency management to determine appropriate Cardholder spending limits based on budget restrictions, job requirements, historical spending patterns, and overall procurement practices;
- Evaluating Cardholder spending limits against actual usage at least annually;
- Terminating a Cardholder's status if necessary (e.g., due to separation from employment, transfer to another State Agency, low P-Card usage) and cancelling a P-Card;
- Ensuring Agency-wide reconciliation procedures provide for timely payment and for allocation of Transactions to the chart of accounts at least monthly; and
- Ensuring that Transactions are reconciled and supported by adequate documentation, including use of Edison or the Online Banking Program, as appropriate.

5.7.1. Cardholder Responsibilities.

The State is responsible for payment to the Bank. Therefore, P-Cards are issued to the State and assigned on its behalf to specific Cardholders. No credit checks will be performed on individual employees nor will account activity be reported to credit rating agencies. Cardholders have the following duties and responsibilities as a condition for being issued a P-Card:

- Being a full-time State employee;
- Reading and becoming familiar with this Policy;
- Attending and passing Cardholder / Approver training course;

- Signing Cardholder / Approver agreement;
- Being responsible for all purchases made on the P-Card; and
- Adhering to this Policy and other applicable rules, policies, and procedures.

9. INTERNAL CONTROLS.

A strong system of internal controls is essential for detection and deterrence of fraud, misuse, or abuse of the P-Card. Internal controls include policies, procedures, training, spending limits, Merchant Category Code restrictions, prompt reconciliation, and prompt account distribution.

9.1. Duty of State Agencies.

Each State Agency must establish an internal control structure that ensures compliance with the State's procurement laws, CPO rules, policies and procedures, this Policy, and the terms and conditions of the P-Card established by the Bank. The State Agency Fiscal Director is responsible for developing and reviewing this Policy, the State Agency's internal P-Card Procedures, as applicable, and ensuring that sound accounting practices and internal policies are in place and enforced. All State Agencies should ensure that the following principles are carried out in their programs:

- Separation of duties between ordering cards (State Agency P-Card Program Coordinators), making Transactions (Cardholders and Users), and review or approval of Transactions for payment (Cardholder Supervisors or Cardholder Approvers);
- Maintain approved, signed documentation for all Cardholders, State Agency Approvers and Cardholder Supervisors;
- Limits on the number of Cardholders assigned to a Cardholder Supervisor or State Agency Approver in order to ensure adequate review of business need and documentation for each Transaction;
- Provision for annual independent audit or review of the Agency's P-Card program by the State Agency P-Card Program Coordinator, State Agency Fiscal Director, State Agency Internal Audit unit, or other business unit assigned State Agency audit responsibilities. Reviews must include adequacy of:
 - Internal policies and procedures, as applicable;
 - Cardholder Single Transaction Limit and Cycle (Credit) Limits;
 - Timeliness of monthly reconciliation procedures; and
 - Documentation for Transactions; and
- Protocol for establishing designated State Agency Central Fiscal Office P-Cardholder and any alternate Central Fiscal Office P-Cardholders, including which Central Fiscal Office P-Card is primary and which alternate Central Fiscal Office P-Card is secondary and circumstances (e.g., unavailability of the primary Central Fiscal Office P-Card, etc.) under which an alternate Central Fiscal Office P-Card may be used.

**12. PURCHASES RESERVED FOR THE DESIGNATED STATE AGENCY
CENTRAL FISCAL OFFICE CARDHOLDER.**

Only the person designated by the State Agency Fiscal Director may use his or her individual P-Card for the following purchases:

- Tuition, fees, and supplies for training individuals;
- Internet, newspaper, radio, or television advertisements;
- Subscriptions to newspapers, periodicals, newsletters, or pamphlets;
- Organization membership dues;
- Charges for meeting rooms and attendant expenses in excess of two hundred dollars (\$200) per day or for more than five (5) days;
- Convention or registration fees;
- Association entry fees; and
- Food, beverage, or catering charges for meetings.

**REQUEST FOR QUALIFICATIONS
("RFQ") TEMPLATE**

REQUEST: **Revise the Request for Qualifications (RFQ) Template as follows:**

1.5. Collaborative Value Development

Option: Collaborative Value Development.

Add the following as appropriate. Note: CVDs should be reserved for more complex procurements. Please refer to *Central Procurement Policy 2013-002, Procurement Methods Policy and Procedures* for more details.

Section 5.6

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.

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.

**SOLICITATION CONFIGURATOR
TERMS ADDITION**

REQUEST: Add the following to the configurator for solicitations generated in Edison:

Inspection of Procurement File: All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.

Protest by Respondent: Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: <http://tn.gov/generalservices/topic/vendor-information>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

Negotiations. The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.

**PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE, SECTION 11.2,
GENERAL INFORMATION**

REQUEST: Revise section 11.2. of the *Procurement Procedures Manual of the CPO as follows:*

11.2. *General Information.*

Procurement professionals should utilize applicable templates and models when drafting procurement documents generated outside of the *Edison* system. When applicable, the templates must be utilized and deviations from the templates shall require an approved Rule Exception Request by oversight examiners. When a Rule Exception Request is not applicable, a written explanation for the deviation shall be provided by the agency head. The models are intended to be used as helpful guides or minimum standards that may be modified as needed, as long as any modifications are in compliance with any applicable statutory or regulatory requirements. Notwithstanding the foregoing, any modifications or additions to the contract model provisions prescribed by statute or by Tenn. Comp. R. and Regs. 0690-03-01-.17(2) or adding model contract provisions that are prohibited by Tenn. Comp. R. and Regs. 0690-03-01-.17(3) shall require an approved Rule Exception Request. All documents are available on the State Intranet website <https://teamtn.gov/cpo/>. Procurement professionals should refer to the intranet site frequently to ensure that the most up-to-date template is being utilized and submitted for requisite approvals.

The Intranet website, models, and templates cited herein are incorporated by reference into this Procurement Procedures Manual as though set forth verbatim herein, and the below listing of available templates and models are for informational purposes only. Links to these templates and models are set forth below. Each of these templates and models is self-explanatory. All questions regarding use of these templates and models should be directed to Central Procurement Office staff. Any and all changes or modifications thereto are subject to review and recommendation by the Advisory Council and approval by the Procurement Commission.

• **APPROVAL REQUESTS**

- Click-wrap Agreement Approval Request
- Amendment Request
- Contract Termination Request
- eHealth Pre-Approval Endorsement Request (for service involving Medical/Mental Health-Related Professional, Pharmaceutical, Laboratory or Imaging)
- HR Pre-Approval Endorsement Request (for service involving State Employee Training, except that pursuant to an IT system contract, service relating to the employment of current or prospective State employees)

- Limitation of Contractor's Liability Request
- STS Pre-Approval Endorsement Request (for service involving Information Technology)
- Rule Exception Request (Deviations from template language that are not specifically permitted by relevant regulations or instructions require an approved written exception. The properly completed request must be signed and dated by the contracting agency head (or authorized signatory) and submitted to the CPO. If approved, the CPO will return the documentation that contracting staff must later submit along with procurement documents for approval)
- Rule Exception Request for the DA or DG Templates
- Solicitation Cancellation Request
- Special Contract Request
- Liquidated Damages Request

- **SOLICITATION TEMPLATES, MODELS & RELATED DOCUMENTS**

- Small Purchases Model
- Informal Purchases Model
- Request for Information (RFI) Model
- Request for Qualifications (RFQ) Template
- RFP & Related Documents:
 - Request for Proposals (RFP) Standard Template
 - RFP Amendment Template
 - Notice of Intent to Award Model
 - Protest Procedures and Protest Bond Requirements Model
 - Solicitation Release Notice Model
 - Performance Bond Template
- Solicitation Development Conflict of Interest Disclosure Model
- Solicitation Evaluation Confidentiality and Conflict of Interest Disclosure Model

- **CONTRACT TEMPLATES**

- Contract Amendment Template (requiring State expenditures, no-cost, or revenue)
- Contract Templates Requiring State Expenditures (by contractor type):
 - All Contractors (except a TN or federal government) (FA)
 - Tennessee Local or Federal Government (GU)
 - U.S. Geological Survey (GU-USGS)
- No Cost Contract Templates (by contractor type):
 - All Contractors (except a TN or federal government) (NC)
 - Tennessee Local or Federal Government (GU-NC)
- Revenue Contract Templates (by contractor type):

- All Contractors (except a TN or federal government) (RV)
 - Tennessee Local or Federal Government (GU-RV)
- **GRANT TEMPLATES**
 - Grant Amendment Template (Cost-Reimbursement or Endowment Grant)
 - Cost-Reimbursement Grant Templates (by grantee type):
 - All Grantees (except a TN or federal government) (GR)
 - Tennessee Local or Federal Government (GG)
 - Endowment Grant (GE) Template
- **INTERAGENCY MODELS**
 - Interagency Agreement (IA) Model
 - Interagency Grant Agreement (IG) Model
- **DELEGATED AUTHORITY TEMPLATES**
 - Delegated Authority Amendment Template
 - Purchase Order Terms and Conditions Template
 - Delegated Grant Authority (DG) Template
 - Delegated Loan Authority (DL) Template
 - Delegated Authority (DA) Template
 - Special Delegated Authority for Declared Disaster (TEMA use only) Model
- **OTHER GENERAL MODELS & ADMINISTRATIVE DOCUMENTS**
 - Conflict of Interest – Annual Attestations
 - Contract Approval – Agency Legal Certification Model
 - Contract Approval – Small Agency Certification
 - Edison Record Status Reset Request
 - Edison Document Naming Convention Model
 - Employer/Employee Analysis Guidelines
 - HIPAA Business Associate Agreement Example
 - “Notwithstanding” Language
 - Signature Certification & Authorization
 - Iran Divestment Act Certification

**GRANT (“GR”) AND GOVERNMENTAL
GRANT (“GG”) TEMPLATES, D. 27 AND
OPTIONAL E.#.SNAP**

REQUEST: Revise the Grant Contract (GR) Template and Governmental Grant (GG) Template optional section D.27. and add a new section E.#. as follows.

State Interest in Equipment or Motor Vehicles

Attorney General staff have advised that the Grantor State Agency must file a UCC-1 or perfect in accordance with applicable law to the extent that it wishes to secure a security agreement and priority.

Add the following Section if the Grant Contract provides for the reimbursement of expenditures for equipment or motor vehicles (revising the second to last sentence of the first paragraph as necessary to establish a lower dollar threshold for the definition of "equipment or motor vehicles").

D.27. State Interest in Equipment or Motor Vehicles. The Grantee shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant Contract to create a security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant Contract. A further intent of this Grant Contract is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grant Contracts between the State and the Grantee.

The Grantee grants the State a security interest in all equipment or motor vehicles acquired in whole or in part by the Grantee under this Grant Contract. This Grant Contract is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment or motor vehicles herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the State a security interest in said equipment or motor vehicles. The Grantee agrees that the State may file this Grant Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment or motor vehicles herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Contract in such form as the State may require to perfect a security interest with respect to said equipment or motor vehicles. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment or motor vehicles, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Contract, including the covenants to pay when due all sums secured by this Grant Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Contract.

The Grantee shall maintain a perpetual inventory system for all equipment or motor vehicles purchased with funds provided under this Grant Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment or motor vehicles;
- b. Vehicle identification number;
- c. Manufacturer's serial number or other identification number, when applicable;
- d. Consecutive inventory equipment or motor vehicles tag identification;
- e. Acquisition date, cost, and check number;
- f. Fund source, State Grant number, or other applicable fund source identification;
- g. Percentage of state funds applied to the purchase;
- h. Location within the Grantee's operations where the equipment or motor vehicles is used;
- i. Condition of the property or disposition date if Grantee no longer has possession;
- j. Depreciation method, if applicable; and
- k. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Grantee shall inventory equipment or motor vehicles annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant Contract within thirty (30) days of its end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the State, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

Upon termination of the Grant Contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant Contract, the Grantee shall request written approval from the State for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

Supplemental Nutrition Assistance Program ("SNAP")

Add the following Section if required by federal law and the Grant Contract involves SNAP.

- E.#.** Title VI Civil Rights. The Grantee agrees to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), section 11(c) of the Food and Nutrition Act of 2008, as amended, the Age Discrimination Act of 1975 (Pub. L. 94-135) and the Rehabilitation Act of 1973 (Pub. L. 93-112, sec. 504) and all requirements imposed by the regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP.

**CONTRACTOR HOSTED SERVICES AND
CONFIDENTIAL DATA - OPTIONAL
LANGUAGE**

REQUEST: Add the following as optional language to all contract models and templates:

Contractor Hosted Services and Confidential Data Options

Add the following section as a minimum requirement if the Contractor will be hosting services (e.g., cloud-based, Software as a Service ("SaaS")) and data that is deemed confidential by State or Federal statute or regulation, or the payment card industry ("Confidential State Data"). The foregoing also includes data in transit.

If the contract will involve Confidential State Data, then the general requirements outlined in Section E.# below should be included. If the contract will allow a Contractor to host specific types of Confidential State Data (e.g., Criminal Justice Services Information, Federal Tax Information, etc.) then follow the instructions as described in the various options below. Include all applicable sections.

Please direct any questions regarding the types of Confidential State Data involved to Strategic Technology Solutions ("STS"), Security area.

General Requirements

E.#. Contractor Hosted Services and Confidential Data.

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor's processing environment containing Confidential State Data shall be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (iii) American Institute of Certified Public Accountants ("AICPA") Service Organization Controls ("SOC") 2 Type II certified. The Contractor shall provide proof of current certification annually and upon State request.
 - (4) The Contractor must comply with the State's Enterprise Information Security Policies. This document is found at the following URL:
<https://www.tn.gov/assets/entities/finance/oir/attachments/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>.
 - (5) In the event that the operating system is an integral part of the application, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
 - (6) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. The Contractor shall make sure that the Application is

at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.

- (7) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application, to ensure that security vulnerabilities are not introduced.
- (8) With advance notice from the State, and no more than one (1) time per year the Contractor agrees to allow the State to perform logical and physical audits of the Contractor's facility and systems that are hosting Confidential State Data.
- (9) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Penetration Tests" shall be in the form of software attacks on the Contractor's computer system, with the purpose of discovering security weaknesses, and potentially gaining access to the computer's features and data. The "Vulnerability Assessment" shall have the goal of defining, identifying, and classifying the security holes (vulnerabilities) in the Contractor's computer, network, or communications infrastructure. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Contractor's Processing Environment.

b. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[NUMBER OF HOURS/MINUTES]**
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **[NUMBER OF HOURS/MINUTES]**
- (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- c. Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State.
- d. Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

Option: Federal Risk and Authorization Management Program ("FedRAMP")

If the contract will involve CJIS data, FTI data, or CMS data include all of the General Requirements above, except replace section E.#.a.(3) with the following and add each additional requirement as applicable.

(3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request.

Option: Criminal Justice Information Services ("CJIS") Data

The contracting state agency must obtain prior approval from the Tennessee Bureau of Investigation ("TBI") before contracting for external hosting of CJIS data.

Option: Federal Tax Information ("FTI") Data

If the contract will contain FTI data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above. Also include the FTI attachment contained elsewhere in this FA Template.

Contractor shall meet all applicable requirements of the most current version of Internal Revenue Publication 1075.

Option: Centers for Medicare and Medicaid Services ("CMS") Data

If the contract will involve CMS data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above:

Contractor shall meet requirements of current version of Minimum Acceptable

Risk Standards for Exchanges ("MARS-E") controls.

Option: Payment Card Industry ("PCI") Data

If the contract will involve PCI data, include all of the General Requirements above, and add the following as section E.#.a.(10):

- (10) Contractor shall be certified to host Payment Card Industry ("PCI") data in accordance with the current version of PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council.

Option: Health Insurance Portability and Accountability Act ("HIPAA") Data

Keep all language in E.#.a above, and do the following:

Contractor must enter into a Business Associate Agreement (BAA) with the State. Therefore, include as a contract attachment a BAA agreement. Please visit the following website link, available on TEAM TN, for the "[HIPAA Business Associate Agreement Example](#)."

In addition, if there is any type of Confidential State Data, include the standard language covering Disclosure of Personally Identifiable Information (PII) from the Section E options provided in the FA Template.

**CERTIFICATION RELATED
DOCUMENTATION**



STATE OF TENNESSEE
PROCUREMENT COMMISSION

3rd Floor, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102
(615) 741-1035 Fax (615) 741-0684

RE-CERTIFICATION

October

1. Item No. 763.A180
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation, TDOT "A," "C," and "E" Buildings, 6630 Centennial Blvd., Nashville, Tennessee.
Annual Price, Bldg "A": \$2,320.98 annually, or \$2.3026 per square foot per year.
Annual Price, Bldg "C": \$2,320.98 annually, or \$2.3026 per square foot per year.
Annual Price, Bldg "E": \$2,320.98 annually, or \$2.3026 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 11/01/2017 – 10/31/2018

2. Item No. 763.A177
Service: SWC #923 - Custom Continuous & Snap-Out Forms
Agency/Location: Tennessee Department of General Services, Central Procurement Office, Statewide.
Annual Price: \$ 949,644.99 (July 2016 through June 2017).
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 11/01/2017 – 10/31/2018

November

3. Item No. 763.63
Service: Janitorial Services
Agency/Location: Tennessee Military Department, Tennessee Army National Guard, Armed Forces Reserve Center, Volunteer Training Site, Building 686, Smyrna, Tennessee.
Annual Price: \$69,135.12 annually, or \$0.8110 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.

LARRY MARTIN, Chairman
Commissioner of Finance & Administration

JUSTIN P. WILSON
Comptroller of the Treasury

ROBERT E. OGLESBY
Commissioner of General Services

MIKE PERRY
Chief Procurement Officer

Re-Certification Requested for Period of 12/01/2017 – 11/30/2018.

4. Item No. 763.A168
Service: SWC #919 – Premium Coffee
Agency/Location: Tennessee Department of General Services, Central Procurement Office, Statewide.
Annual Price: \$ 1,947.84 (September 2016 through August 2017).
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2017 – 11/30/2018.
5. Item No. 763.A100
Service: Ground Maintenance Services
Agency/Location: Tennessee Department of Transportation, TDOT Region 4 Boswell Complex, 5344 Boswell Ave, Memphis, Tennessee.
Annual Price: \$ 7,008.84, or \$194.69 per month.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2017 – 11/30/2018.

ADDENDUM

1. Item No. 763.A130
Service: SWC #920 – Drug Testing Kits
Agency/Location: Tennessee Department of General Services, Central Procurement Office, Statewide.
Annual Pricing: \$ 1,263,760.11 (July 2016 through June 2017). Adding two (2) additional drug screening tests to the assortment of items on contract.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2017 – 09/30/2018.

DECERTIFICATION

1. Item No. 763.A161
Service: Janitorial Services
Agency/Location: Tennessee Department of Environment and Conservation, Pickett State Park, 4605 Pickett Park Highway, Jamestown, Tennessee.
Annual Price: \$10,228.60 annually, or \$14.39 per labor hour for 711 total hours per year.
No price increase requested.
Satisfaction: Decertification was requested by the agency due to budget cuts and a lack of funding. Services will be provided internally by park employees.
Decertification Requested Beginning 12/01/2017.

CERTIFICATION

1. Item No. 763.A183

Service: Janitorial Services

Agency/Location: Tennessee Department of Transportation, TDOT Region 4 Boswell Complex, Engineering Building, Help Building, and Regional Transportation Management Center, 5334 and 5336 Boswell Ave, Memphis, Tennessee.

Annual Price, Engineering Building: \$8,373.48 annually, or \$0.9775 per square foot per year.

Annual Price, Help Building: \$3,813.96 annually, or \$2.98 per square foot per year.

Annual Price, Regional Transportation Management Center: \$21,799.32 annually or \$1.66 per square foot per year.

No price increase requested.

Satisfaction: No complaints have been filed.

Certification Requested for Period of 12/01/2017 – 11/30/2018.

LIMITATION OF LIABILITY REPORT

**Approved Limitation of Liability Requests
for the Time Period August 3, 2017 to December 1, 2017**

TRACKING	CALENDAR YEAR	ID	LOGGED	STATUS	STATUS DATE	SERVICE	CONTRACTING AGENCY	BASIS FOR REQUEST	COT APPROVAL OF REQUEST
32110-107	17	9294	8/3/2017	APPROVED	8/4/2017	SECURE PHYSICAL DATA STORAGE AND EMERGENCY DATA RECOVERY WITH THE POSSIBILITY OF A FUTURE CLOUD STORAGE COMPONENT	CENTRAL PROCUREMENT OFFICE	CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOSS OR DESTRUCTION OF, OR DAMAGE TO, MEDIA STORED BY CONTRACTOR UNDER THIS CONTRACT UNLESS CONTRACTOR FAILS TO EXERCISE SUCH CARE AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES. IF LIABLE, THE AMOUNT OF CONTRACTOR'S LIABILITY FOR LOSS OR DESTRUCTION OF, OR DAMAGE TO, ANY SUCH MEDIA SHALL BE LIMITED TO THE FULL AND ACTUAL COST OF REPLACING THE PHYSICAL ITEM.	8/7/2017
31865-00482	17	9321	8/4/2017	APPROVED	8/8/2017	THE WORK NUMBER, A SERVICES OF EQUIFAX 9TALX CORPORATION THAT PROVIDES EMPLOYMENT AND INCOME VERIFICATIONS TO ASSIST WITH THE DETERMINATION OF ELIGIBILITY AND OTHER TENNCARE RELATED SERVICES	DEPARTMENT OF FINANCE AND ADMINISTRATION DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION	NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THE CONTRACTOR BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES 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.	8/10/2017
32101-05917	17	9342	8/10/2017	APPROVED	8/11/2017	CATALOG MANAGEMENT SOFTWARE SOLUTION	DEPARTMENT OF GENERAL SERVICES	CONTRACTOR'S LIABILITY FOR ALL CLAIMS ARISING UNDER THIS CONTRACT SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE (1) TIMES THE MAXIMUM LIABILITY AMOUNT.	8/15/2017
34701-ATS	17	9368	8/15/2017	APPROVED	8/15/2017	ARMORED TRUCK SERVICE	DEPARTMENT OF REVENUE	CONTRACTOR'S LIABILITY FOR ALL CLAIMS ARISING UNDER THIS CONTRACT SHALL BE LIMITED TO AN AMOUNT EQUAL TO \$50,000 PER DELIVERY FOR EACH LOCATION WHICH IS (4.46) TIMES LESS THE (MAXIMUM LIABILITY, ESTIMATED LIABILITY, OR MAXIMUM REVENUE).	8/16/2017
30709-18003	17	9609	9/27/2017	APPROVED	9/27/2017	MAINTENANCE & SUPPORT FOR PROPRIETARY SOFTWARE THAT HAS BEEN CUSTOMIZED BY TYLER FOR THE COT-MANAGED INTEGRATED MULTI PROCESSING OF ADMINISTRATIVE AND COMPUTER ASSISTED MASS APPRAISAL TECHNOLOGY (IMPACT) AND THE CASE MANAGEMENT & RESOLUTION CENTER (CASE MGMT.) SYSTEMS	COMPTROLLER OF THE TREASURY (COT)	TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.	9/27/2017
31625-18007	17	9858	11/14/2017	APPROVED	11/14/2017	ARTS EDUCATION DATA PROJECT MAKING NON-CONFIDENTIAL INFORMATION ABOUT K-12 ARTS CLASSES AND PARTICIPATION LEVELS AT THE SCHOOL AND DISTRICT LEVEL AVAILABLE IN ONLINE DASHBOARDS AND A DATA WAREHOUSE.	TENNESSEE ARTS COMMISSION	CONTRACTOR'S LIABILITY FOR ALL CLAIMS ARISING UNDER THIS CONTRACT SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE (1) TIMES THE ESTIMATED LIABILITY AMOUNT.	11/15/2017

CORRECTION OF ERRORS REPORT

Request to correct errors:

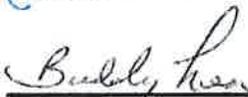
- (1) Revise the first sentence of the FA (fee for goods or services) Template A#. Warranty by changing "general" to "generally."
- (2) The Invitation to Bid ("ITB") solicitation and contract terms that are generated from the Edison Document Configurator for Statewide Contracts are attached to this document.
- (3) Update the "TO:" Address field on the E-Health Pre-approval Endorsement Request E-mail Transmittal to: office.eHealth@tn.gov.

Explanation of errors:

- (1) The sentence should provide as follows: "Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services.
- (2) The ITB solicitation and contract terms are being updated in the Edison Document Configurator to include the terms as attached to this document. Please note that some of the terms may be mutually exclusive or not included in a particular solicitation depending on the characteristics particular to a specific ITB or contract.
- (3) The employee's email address currently listed on the E-Health Pre-Approval Endorsement Request is no longer employed with the Office of e-Health Initiatives.

Procurement Staff signatures:


Shannon Howell, Deputy Chief Procurement Officer 11/27/17
Date


Buddy Lea, Assistant Commissioner of the Department of Finance & Administration 11/29/17
Date


Donald Ivancic, Legislative Procurement Compliance Manager, Comptroller of the Treasury 11/27/2017
Date



Invitation to Bid (ITB)
For Brief Goods or Services Caption
Event #

Section 1 -- Background Information

In one paragraph, provide a brief, high-level explanation of the goods or services sought or a summary of the problem to be addressed. Include a summary of the scope or specifications and reference the portion of the document that contains a detailed scope or specifications.

Statewide Contract. The purpose of this Invitation to Bid is to establish a source or sources of supply for all Tennessee State Agencies, Tennessee local governmental entities, the board of trustees of the University of Tennessee system, the Tennessee board of regents system or the state university boards, and the nonprofit entities identified in Tenn. Code Ann. § 33-2-1001.

Pre-response Conference Notification. The Central Procurement Office will hold a pre-response conference for this solicitation at the date, time, and location specified below:

Date/Time:

Location:

Room:

Prospective respondents are encouraged to attend this pre-response conference; however attendance is not mandatory in order to submit a response. The Central Procurement Office conducts pre-response conferences to discuss and answer questions prior to response due date. The pre-response conference is for informational purposes only. Nothing stated at the pre-response conference shall change the solicitation unless the change is reflected in writing and disseminated to all prospective respondents that attended the pre-response conference.

Accommodation for People with Disabilities. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.

Questions. Respondents may submit written questions about this ITB to the Solicitation Coordinator. All questions must be submitted no later than **DATE**.

Responses Due. The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

Section 2 -- Award Criteria

Single Award -- Lowest Cost. A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.

Option to Award by Line. The State may award a single contract for all line items to the respondent whose response meets the requirements and criteria in this ITB at the lowest cost.

Alternatively, the State may award a separate contract for each line item. Line item totals shall be calculated by multiplying the unit price by the line item quantity.

Option to Award by Grouped Lines. The State may award a single contract for all line items to the respondent whose response meets the requirements and criteria in this ITB at the lowest cost. Alternatively, the State may award separate contracts for each group of line items using the following method: Grouped Lines: %%TN_DGS_T405B_GROUPED_LINES%% If the State awards contracts by group of line items, total group price shall be calculated by summing the line items totals in the group. Line item totals shall be calculated by multiplying the unit price by the line item quantity. Respondents must bid all line items in a group to be considered for an award for that group unless otherwise specified.

Multiple Awards -- Constant Compete. The State will award separate contracts to each respondent that meets the mandatory requirements of this ITB. After award of the contract, the State will seek quotes and issue purchase orders as described in this ITB.

Single Award --Lowest Cost, Pricing For All Line Items Required. A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost. Line item totals shall be calculated by multiplying the unit price by the line item quantity. If a response contains more than one line item, each line item total shall be added together for a total price for all line items included in the response. To be considered for award, a respondent must submit pricing for all line items.

Single Award -- Lowest Composite Score. The State is seeking pricing for three different contract terms: a one (1) year term, a three (3) year term, and a five (5) year term. The State will determine the lowest cost respondent by calculating the lowest composite score for all three contract terms. Line item totals shall be calculated by multiplying the unit price by the line item quantity. If a response contains more than one line item, each line item total shall be added together for a total price for all line items contained in the response. The response must include a price for all line items in each contract term to be considered for an award. The respondent's composite score will be determined by summing the average yearly cost for each contract term option: One (1) year term cost + (three (3) year term cost/3) + (five (5) year term cost/5) = composite score. The State will award the contract to the respondent whose response meets the requirements and criteria set forth in this ITB with the lowest composite score. The State reserves the right to award a one-year, a three-year, or a five-year contract to the respondent that has the lowest composite score.

Section 3 -- Standard terms of the Solicitation

Respondent Registration. Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:
https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST

Respondent's Ability to Perform. The State shall have the right to require evidence of the Respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.

Quality of Workmanship and Materials. Unit price responses are requested on products or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.

Performance. The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.

Clarifications. The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.

Negotiations. The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.

Response Cancellation and Rejection. The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except pursuant to target pricing or best and final offer negotiations as specified in this ITB.

Communications and Contacts. Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

NAME: **NAME**

STATE AGENCY NAME: Department of General Services -- Central Procurement Office

STREET ADDRESS: 312 Rosa L Parks Avenue, 3rd Floor - Nashville TN 37243

TELEPHONE NUMBER: 555-555-5555

E-MAIL ADDRESS: Email Address@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, Respondents may alternatively contact:

1. Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as

general, public information relating to this RFP (visit www.tn.gov/businessopp/ for contact information); and

2. The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley
Department of General Services, CPO
312 Rosa L Parks Ave, 3rd Floor Tennessee Tower, Nashville, TN 37243
615-741-3836
Helen.Crowley@tn.gov

Responses Submitted by Mail. If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address: Department of General Services, Central Procurement Office Attn: Bidder Services 3rd Floor, William R. Snodgrass, Tennessee Tower 312 Rosa L. Parks Avenue Nashville, TN 37243-1102. Failure to comply with these requirements may result in rejection of the response.

Models Included in Response. All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.

Respondent Certification. By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.

Exceptions or New Terms or Conditions. Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.

Conflict of Interest. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:

1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

Specifications Govern. Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.

Firm Offer. The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.

F.O.B. Destination. Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.

Tax Exemption. The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful respondent shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this ITB.

Unit Prices Requested on Qualified Products List. The response shall contain unit prices for the brands and model numbers identified in the Qualified Products List ("QPL") below: Reference Line(s): **[Insert Line Reference #s]** Qualified Products List: **[Insert Appendix Reference #]**. The products included in the response must be on the referenced QPL. All respondents shall submit a certification that the product they propose to provide is of the same formulation as the product provided for State examination, testing, and approval for placement on the QPL. Any change in formulation will require submission of a sample for re-evaluation. The State will not test, evaluate, or place new products on the QPL.

Prompt Pay Discount. Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.

Fixed Discount or Surcharge. The percent discount or surcharge per line item must be fixed for the contract's term.

On-site Inspection. All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.

Samples. The State may request samples of the products listed below for evaluation and testing: Reference Line(s): **[Insert Line Reference #s]** Samples provided shall be identical to the products identified in the response. If the State requests samples, respondents must provide the samples, at no cost to the State, to the Central Procurement Office within ten (10) calendar days of the request. The Central Procurement Office will not accept any samples unless all transportation charges have been prepaid. Samples must be clearly labeled as follows:

State of Tennessee Department of General Services, Central Procurement Office
312 Rosa L Parks Avenue
William R. Snodgrass Tennessee Tower, 3rd floor
Nashville, TN 37243-1102
Attn: **Solicitation Coordinator Name**

Name of Respondent:
Address:

ITB Number:
Item Number(s):
Bid Closing Date:

If requested samples are not provided or are improperly labeled, the State may consider the response non-responsive. Upon the respondent's written request at the time samples are submitted, the State will return samples. Samples not destroyed in the evaluation and testing processes will be returned at the respondent's expense. If the State does not receive a written request for return of samples, the State will utilize or dispose of samples at its discretion. The State may retain samples from the successful respondent for the contract's term. The State assumes no liability for samples.

Used Equipment. When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.

Authorized Service Centers. Respondents must include a list of all authorized factory service centers in their responses.

Tennessee Contractor License. Respondents shall comply with Tenn. Code Ann. § 62-6-119 in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119 shall be rejected.

Purchase of Materials for Highways or Roadways. Respondents must comply with Tenn. Code Ann. § 54-5-135.

Energy Star Products. Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.

Response Requested for Software Products. Unit prices are requested for software products that meet the State's requirements. Alternative software products will not be accepted and, if included, may result in rejection of the response. Respondent must submit and supply throughout the contract term the most recent version or release available unless otherwise specified in this ITB. All responses must include full use license rights for the term of the contract or as otherwise specified in the contract. The State will not accept or make payment for outdated software versions or releases. Responses shall include software maintenance and support services when required in the specifications.

Safety of Chemical Products. All respondents awarded a contract must be capable of maintaining, for all of its chemical products available under this Contract, a material safety data sheet ("MSDS") on the national MSDS search repository or on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge. In lieu of posting a MSDS on MSDSSEARCH, the respondent that receives a contract award must include the manufacturer's universal resource locator (URL) for its MSDS. For purposes of this MSDS requirement, the State recognizes the following URL for national MSDS search repository: MSDS-SEARCH, which can be accessed on the internet at: <http://www.msdssearch.com>.

Professional Licensure. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide

the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

Department of Revenue Registration. Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. For purposes of this registration requirement, the Department of Revenue may be contacted at: <http://www.tn.gov/revenue/topic/revenue-contacts>

Prohibition of Illegal Immigrants. Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.

Inspection of Procurement File: All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.

Protest by Respondent: Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: <http://tn.gov/generalservices/topic/vendor-information>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

Governor's Office of Diversity Business Enterprise

Efforts to Achieve Diversity Business Participation. The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran owned, disabled owned and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran owned business" means a service-disabled veteran owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis."

Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<http://tn.gov/generalservices/article/godbe-program-eligibility>

Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215> directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name:		
Solicitation Event Name:		Event Number:
Respondent's Contact Name:	Phone: ()	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE <input type="checkbox"/> DSBE		
Certifying Agency: _____		

Estimated level of participation by diversity businesses if awarded a contract pursuant to this ITB:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	% of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE / DSBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this contract by small business enterprises and businesses owned by minorities, women, disabled and service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise (Go-DBE) TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____ Date: _____

Printed Name and Title of Signatory _____



Statewide Contract #Number, Brief Description

Mandatory Terms and Conditions

1. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

2. Warranty Clauses.

2.1. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

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

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

2.2. **Warranty for Resale of Goods.** For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.

2.3. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30)

days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

3. **Term of Contract.** This Contract shall be effective on **DATE** ("Effective Date") and ending on **DATE** ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

4. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to three (3) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option.

5. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

6. **Estimated Liability.** The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be **DOLLAR AMOUNT (\$NUMBER)** ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

7. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified include all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

7. **Price Changes.** Prices identified in the Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source, shall remain firm for three hundred and sixty-five (365) days ("Firm Price Period").

- a) Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.
- b) Price Increases. After the Firm Price Period, Contractor may request price increases. The request shall: include independently verifiable documentation that supports Contractor's request for a price increase; not constitute an increase in Contractor profit; and reflect a price increase that is applicable to all of Contractor's customers.
- c) Approval of Price Changes. The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

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

8. **Travel Compensation.** Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." The Contractor must include (in addition to the other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

9. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.

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

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

b) Contractor's invoices shall:

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

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

10. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
11. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.
12. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
13. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
 - a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.
14. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.
15. **Minimum Order.** The minimum order under this Contract is **number** dollars (**\$NUMBER**).
16. **Proof of Cost for Parts, Materials, Supplies and Equipment.** Contractor shall invoice all parts, materials, supplies, and equipment at Contractor's out-of-pocket cost ("Cost") plus ten percent (10%) and minus any applicable sales or use tax as provided in Tenn. Code Ann. § 67-6-329. If Contractor receives any discounts when purchasing parts, materials, supplies, or equipment, the State shall receive the benefit of the discounts when Contractor determines its Cost. With each invoice submitted to the State, Contractor shall include documentation of the Cost of parts, materials, supplies, and equipment. If Contractor fails to provide sufficient

documentation of its purchase Cost, the State may verify current market value, and if necessary, adjust Contractor's invoice to reflect fair market price.

17. **Proof of Cost for Parts Not in a Catalog or Price List.** For all products not identified in the specified catalog or price list, Contractor shall invoice the product at Contractor's out-of-pocket cost ("Cost") plus ten percent (10%) and minus any applicable sales or use tax as provided in Tenn. Code Ann. § 67-6-329. If Contractor receives any discounts when purchasing parts, materials, supplies, or equipment, the State shall receive the benefit of the discounts when Contractor determines its Cost. With each invoice submitted to the State, Contractor shall include documentation of the Cost of parts, materials, supplies, and equipment. If Contractor fails to provide sufficient documentation of its purchase Cost, the State may verify current market value, and if necessary, adjust Contractor's invoice to reflect fair market value.
18. **Price Adjustment for Bituminous Material.** The monthly average bituminous adjustment factor ("MABAF") shall be applied to the contract unit price provided the increase or decrease differs five percent (5%) or more from the basic bituminous material index dated 5/30/2017 AT 500 (PER TON). The basic bituminous material index is taken from the Tennessee Department of Transportation's construction index. The monthly bituminous price index can be obtained from the regional Tennessee Department of Transportation ("TDOT") office closest to the respondent's location. This index is used for all asphalt projects in Tennessee and is distributed to all TDOT field offices and contractors statewide.

The monthly average adjustment will be based on TDOT special provision 109B, "Regarding Price Adjustment for Bituminous Material" as per TDOT's standard specifications for road and bridge construction. The adjustment will be based on the asphalt content and will be calculated in accordance with the following formula only when the percent of price indexes is five percent (5%) or greater/less. $PA = (IC - IB) \times (T \times AC\%)$ where: PA = price adjustment for adjustment month; IB = basic bituminous material index; IC = monthly average bituminous material index; T = tons of bituminous material for adjustment month; and AC% = asphalt content percent used. The following is an example of a price adjustment of over five percent (5%). PA = price adjustment for adjustment month: \$870.00 IB = basic bituminous material index: \$150.00 DATE: 5/30/2017 IC = monthly average bituminous material index: \$180.00 DATE: 5/30/2017 (month asphalt was picked up) T = tons bituminous material for adjustment month: 500 tons AC% = asphalt content percent used: 5.8% 500 tons @ 5.8% = 29 tons adjustment \$180.00 - \$150.00 = \$30.00 x 29 tons = \$870.00 (price adjustment)

The awarded contractor must submit adjustment calculations on a separate invoice at the same time the original invoice is submitted. Failure to submit both invoices together will result in forfeiture of any recompense for the bituminous material index amount greater than five percent (5%). Awarded contracts will include a line which will allow the State to pay contractor for bituminous material price adjustment increases.

19. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.
20. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. Contractor shall begin providing goods or performing services required under this Contract within %%CPO_DELIV_DAYS%% of days after receipt of a purchase order. All quotations shall be F.O.B. destination.
21. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the

Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

22. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone Number

State of Tennessee:

Solicitation Coordinator Name
Address
Email Address
Telephone Number

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

23. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
24. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
25. **Termination for Convenience.** The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

26. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
27. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
28. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

29. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
30. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at <http://tn.gov/generalservices/topic/vendor-information>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current,

written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
31. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
32. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
33. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
34. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
35. **Independent Contractor.** The parties shall not act as employees, partners, joint venturers, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.
36. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

37. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, 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. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
38. **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 Estimated Liability amount 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. 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.
39. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

40. **Statewide Contract Reports.** All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.
- a) **Quarterly Reports:** Contractor(s) will submit quarterly reports to the Contract Administrator no later than ten (10) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than January 10th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities,

quasi-governmental bodies ("Other Governmental Bodies"), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. Edison contract number
2. Contract line item number
3. Invoice date
4. Invoice number
5. Supplier part number
6. Item or bundle description
7. Quantity purchased
8. Unit of measure
9. Unit of measure description
10. Name of State Agency, Other Governmental Body or not-for-profit entity
11. Identity of purchaser: State entity or non-State entity
12. State Agency location
13. Unit/Contract price per line item
14. List price as listed in supplier's catalog if catalog item
15. Subtotals for each category above
16. Grand totals for each category above

- b) Diversity Business and Subcontractor Usage Reports: The Contractor shall submit monthly reports of returns, credits, savings, net purchases, and percent of net purchases by subcontractors, small business enterprises, and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be submitted to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.
- c) Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

41. **HIPAA Compliance**. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

- d) The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

42. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

43. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.

44. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

45. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
46. **State and Federal Compliance.** The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
47. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 407.
48. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
49. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
50. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

51. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
- c) any clarifications of or addenda to the Contractor's response seeking this Contract;
- d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
- e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
- f) the Contractor's response seeking this Contract.

52. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

53. Insurance Clauses.

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 over fifty thousand dollars (\$50,000) must be approved by the State. The deductible 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.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

The State 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.

- 53.1. **Workers' Compensation and Employer Liability Insurance.** The Contractor shall maintain:
- a) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
 - b) 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.
 - c) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 1. The Contractor employs fewer than five (5) employees;
 2. The Contractor is a sole proprietor;
 3. The Contractor is in the construction business or trades with no employees;
 4. The Contractor is in the coal mining industry with no employees;
 5. The Contractor is a state or local government; or
 6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

53.2. **Commercial General Liability Insurance.** The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, 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-limit 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).

53.3. **Automobile Liability Insurance.** The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles). 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.

53.4. **Professional Liability Insurance.**

- a) Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
- b) 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
- c) If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

54. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

Special Terms and Conditions

55. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

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

material or information in conformance with applicable state and federal law.

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

57. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
58. **Authorized Users - Statewide Contract.** This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies.

The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a) all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b) Tennessee local governmental agencies;
- c) the board of trustees of the University of Tennessee system, the Tennessee board of regents system, or the State university boards;
- d) any private nonprofit institution of higher education chartered in Tennessee; and,
- e) any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

59. **State of Tennessee Administrative Fee.** A number (#%) administrative fee will be included in the cost of all goods and/or services purchased under this Contract. This number percent (#%) administrative fee will be rebated back to the State of Tennessee based on quarterly contract usage reports documenting State, local government and non-profit entity purchases. The fee is due to the State no later than forty-five (45) days after the end of the specified reporting period.

Calendar Quarter 1 (Jan 1-Mar 31)

Calendar Quarter 2 (Apr 1-June 30)

Calendar Quarter 3 (July 1-Sep 30)

Calendar Quarter 4 (Oct 1-Dec 31)

Contractor shall submit payments to:
Ron Plumb, Director of Financial Management
Department of General Services
22nd Floor, William R Snodgrass, Tennessee Tower

312 Rosa L. Parks Avenue
Nashville, TN 37243

Contract usage reports shall be submitted to:
Contract Administrator
Department of General Services
3rd Floor, William R. Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Email: CPO.SWC@tn.gov

60. **Cleanup.** The Contractor is responsible for the removal of all debris and shall leave the work area in a "broom clean" condition, less wear and tear excepted. In the event Contractor fails to return the work area to a broom clean condition after completion of work, the State reserves the right to assess the Contractor reasonable costs for cleanup and disposal.
61. **Intellectual Property Indemnity.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
62. **Extraneous Terms and Conditions.** Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned on the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
63. **License Warranty.** Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.
64. **Software License Warranty.** Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
65. **Software Support and Maintenance Warranty.** Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
66. **Prevailing Wage Rates.** All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 -- 12-4-415.

67. **Modular Structures.** Before beginning construction, Contractor shall submit design drawings, sealed by an architect or engineer registered in the State of Tennessee, to the Tennessee Department of Commerce and Insurance, Fire Protection Division, for review and approval. All modular building units shall: meet the Tennessee Department of Commerce and Insurance's requirements; and comply with applicable licensing, inspection, permit, and plan review requirements under federal, state, or local law. All installation of modular building units shall be performed by a contractor who possesses a Tennessee license of the appropriate classification for the work performed. Any subcontractor(s) shall comply with applicable state contractor licensing requirements.
68. **Personally Identifiable Information.** While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

69. **Printing Authorization.** The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103(d).

70. **State Ownership of Goods.** The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
71. **Additional Lines, Items or Options.** At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a) After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 1. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 2. Any pricing related to the new lines, items, or options;
 3. The expected effective date for the availability of the new lines, items, or options; and
 4. Any additional information requested by the State.
 - b) The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c) To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - d) Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.
72. **State Furnished Property.** The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
73. **Environmental Tobacco Smoke.** Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
74. **Prison Rape Elimination Act (PREA).** The Contractor must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.

75. **Payment Bond.** The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Estimated Liability, **DOLLAR AMOUNT (\$NUMBER)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract. Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State's prior written approval.
76. **Partial Takeover of Contract.** The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
77. **Unencumbered Personnel.** The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
78. **Survival.** The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
79. **Liens, Encumbrances and Title.** The Contractor owns and has good and marketable title to, and legal ownership of the goods, free and clear of any and all liens, security interests, pledges, mortgages, charges, limitations, claims, restrictions, rights of first refusal, rights of first offer, rights of first negotiation or other encumbrances of any kind or nature (collectively, "Encumbrances"). Upon delivery, without exception, the State will acquire from the Contractor legal and beneficial ownership of, good and marketable title to, and all rights to the goods to be sold to the State by the Contractor, free and clear of all Encumbrances. The Contractor shall, within ten (10) days after delivery, deliver to the State, if required by applicable law to establish or show evidence of ownership, any and all documents or certificates required to establish or show evidence of the State's ownership in the goods.

MEMORANDUM OF UNDERSTANDING REPORT

CPO Memorandum of Understanding (MOU) Log

11/28/2017

Number	SWC # / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
1	387	MSP	Jeff Magruder	Knowledge Services	Temporary and Contract Staff Augmentation	1/19/2015	Oracle Business Intelligence Architect - Onsite
113	136	Pest Control	Jordan Green	David Giles dba Middle TN Exterminating	Monthly IPM pest control	8/9/2017	Education, Achievement School District, Corning School 1662 Dabbs Ave, Memphis, TN
114	136	Pest Control	Jordan Green	David Giles dba Middle TN Exterminating	Monthly IPM pest control	8/9/2017	Education, Achievement School District, Frayser School 1692 Dellwood Ave, Memphis, TN
115	136	Pest Control	Jordan Green	David Giles dba Middle TN Exterminating	Monthly IPM pest control	8/9/2017	Education, Achievement School District, Georgian School 3930 Lewier St, Memphis, TN
116	136	Pest Control	Jordan Green	David Giles dba Middle TN Exterminating	Monthly IPM pest control	8/9/2017	Education, Achievement School District, Whitney School 1219 Whitney Ave, Memphis, TN
117	136	Pest Control	Jordan Green	David Giles dba Middle TN Exterminating	Monthly IPM pest control	8/9/2017	Education, Achievement School District, Westside School 3389 Dawn Dr, Memphis, TN
118	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	8/30/2017	Certified Occupational Therapist Assistant II
119	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	8/30/2017	Travel LPN
120	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	8/30/2017	Behavioral Analyst
121	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	8/30/2017	CPR Trainer
122	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	8/30/2017	Phlebotomist
123	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	8/30/2017	Nurse Consultant
124	387	MSP	Mike Leitzke	Knowledge Services	Temporary and Contract Staff Augmentation	8/30/2017	Nurse Supervisor
125	53203	NetTN	Travis Johnson	AT&T Corp	Optical Transport Network (OTN) infrastructure	8/7/2017	Additional Equipment and Services for Session Border Controller (SBC) for DHS
126	49074	KONE Elevator Maintenance	Doug Whitcomb	KONE Inc.	Elevator Repair and Maintenance	12/1/2017	Adds elevator service locations

CPO GLOSSARY

CPO Glossary

A B C D E F G H I J K L M N O P Q R S T U
V W X Y Z

A

- **“Adequate Financial Resources”** means a Respondent’s ability to fully perform the financial terms and conditions of a contract entered into with the State. A Respondent that lacks Adequate Financial Resources may be considered non-responsible and not considered for contract award.

- **“Advisory Council”** means the advisory council on state procurement created and empowered by T.C.A. § 4-56-106
- **“Affiliate”** of a Contracting Party means
 - i. any member, partner or joint venture member of the Contracting Party;
 - ii. any shareholder of the Contracting Party having an interest of at least ten percent (10%) in any class of stocks;
 - iii. any Person that directly or indirectly through one or more intermediaries Controls (as hereinafter defined), or is Controlled by, or is under common Control with, the Contracting Party or any of the Contracting Party’s shareholders, members, partners or joint venture members; or
 - iv. any entity for which ten percent (10%) or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by
 - a. the Contracting Party,
 - b. any of the shareholders, members, partners or joint venture members of the Contracting Party, or
 - c. any affiliate of the Contracting Party.
- **“Agency”** means each State board, commission, committee, department, officer, or any other unit of State government.
- **“Agency Term Contract”** means a State Agency contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price or prices. 

- **“Aggrieved Respondent”** means a Respondent who was not awarded a contract and claims his or her rights were infringed in connection with a solicitation or award by the Central Procurement Office.
- **“Approval Process”** means the process by which necessary State approvals are obtained.
- **“Award”** in the context of procurement means a State Agency's notice to a proposer of the acceptance of a proposal.
 - The term “Award” in the context of a Grant Contract means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law.

B

- **“Bank”** means the entity issuing the State's P-Card or any of its subsidiaries as the context may require.
- **“Base Contract”** means the original written contract prior to any amendments.
- **“Best and Final Offer” (“BAFO”)** means a negotiation tool whereby the State requests that respondents provide their best and final offer or response.
- **“Biased Ground Rules”** means the requirements for a contract or prerequisites for competition for a contract that have been written by a Person who, as a part of its performance of a State contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the Person who established the requirements or prerequisites, or any of its Affiliates, seeks to compete.
- **“Bid”** means a response by a vendor to an invitation to bid.
- **“Bidding”** means informal written, verbal, or telephone quotations, which may be obtained by a State Agency when a sealed bid is not required.
- **“Bonus”** means a disallowed payment, which is made in addition to that which is required by a contract for minimally required performance, and is not based on contractor performance at a definitively specified level beyond that which is minimally required.

C

- **“Calendar Day”** means all days in a month, including weekends and holidays.
In the event a final calendar day falls on a weekend, holiday, or other day where State offices are closed, the next business day becomes the final calendar day. 

- **“Cardholder”** means the State Agency employee who is issued a physical P-Card to initiate payments on behalf of the State.
- **“Cardholder Agreement”** means the document signed by the Cardholder to verify that he or she completed P-Card training, received a copy of the P-Card Policy, and understands the Policy.
- **“Cardholder Application”** means the application completed by the Cardholder that is approved by the Cardholder Supervisor and the State Agency P-Card Program Coordinator that is required before a P-Card Account will be assigned to a Cardholder.
- **“Cardholder Supervisor”** means the State Agency employee with supervisory authority over the Cardholder.
- **“Central Fiscal Office P-Card”** means the P-Card assigned to a Cardholder with a Single Transaction Limit of up to fifty thousand dollars (\$50,000).
- **“Central Procurement Office”** (“CPO”) means the State office established and empowered by T.C.A. § 4-56-104.
- **“CPO”** – means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.
- **“Central Procurement Office Policy”** means a documented set of guidelines concerning procurement related strategy, which directs and restricts the plans, decisions, and actions of State procurement professionals as approved by the Procurement Commission in accordance with T.C.A. §§ 4-56-101, et seq.
- **“Certification”** – means the process by which goods or services are certified by the Procurement Commission. A certification shall expire after three hundred sixty-five (365) days.
 - “Certification”- means the formal determination by the Procurement Commission that a given commodity or service is certified by the Procurement Commission Staff as being of satisfactory quality, reasonable in price, and commercially available.
- **“Certification Committee”**- means the committee established by Title 41, Chapter 22, Part 119 (c), Tennessee Code Annotated.
- **“Certification Term”** means the one (1) year term following the effective date of a Certification.
- **“Chief Procurement Officer”** means the official as defined by T.C.A. § 4-56-104.
 - Chief Procurement Officer is Michael Perry.
- **“Click-wrap Agreement”** means an agreement appearing on a graphical user interface which presents a prospective licensee (i.e., the end user) with a message requiring the prospective licensee to manifest assent to any proposed terms and conditions by clicking a dialog box in order to proceed with an internet transaction. ↑

Although electronic, Click-wrap Agreements are considered "writings" because they are printable and storable.

- **"Cognizant State Agency"** - means the State Agency whose funds comprise the greatest percentage of Awards received by a Subrecipient as determined by the Central Procurement Office.
- **"Collaborative Value Development"** ("CVD") means an interactive technique between the State and Qualified Respondents within the Competitive Range, as defined in the Request for Qualifications. The purpose of the CVD is to utilize the expertise and knowledge of the Qualified Respondents to develop a Solicitation that will award a contract to the Qualified Respondent that receives the highest score.
- **"Committee"** means the committee for purchase from the blind and other severely disabled established pursuant to Tenn. Code Ann. § 71-4-703.
- **"CMRA"**- Community Rehabilitation Agencies of Tennessee- the central nonprofit agency designated by the advisory committee for purchase from the blind and other severely disabled, created by Title 71, Chapter 4, Part 703, Tennessee Code Annotated)

- **"Competitive Negotiation"** means a competitive procurement method that involves direct contract negotiation with one or more respondents who have been pre-qualified or pre-selected by the Central Procurement Office through a competitive process.
- **"Competitive Negotiation Techniques"** means those direct negotiation techniques used in connection with a competitive negotiation method of procurement.
- **"Competitive Range"** means those proposals that have a reasonable chance for contract award based on criteria set forth in the written solicitation document.
 - Only proposals within the Competitive Range shall be considered for additional discussions and negotiation.
- **"Competitive Sealed Proposal"** means a procurement method in which all proposals are reviewed at a predetermined time and place and a contract is awarded in accordance with the terms of a Solicitation.
- **"Contract"** means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued.
- **"Contract Administration"** means the roles within the Central Procurement Office or a Covered State Agency associated with contract management, which includes evaluating contractor performance, managing contract compliance, and whether or not to renew or extend a contract. Contract Administration does not include ancillary State Agency programmatic roles related to a contract or ministerial roles, such as paying contract invoices or administrative support functions.
- **"Contract Amendment"** means a written contract document that changes, adds, or deletes one or more terms or conditions of an existing contract.



- o "Contract Amendment"- means an amendment, renewal and/or extension of an Original Contract, which includes by example only, changes to term, scope of work, pricing and amount of compensation.
 - **"Contract Approval"** means the procedures a State Agency must follow to obtain final approval of a contract.
 - **"Contract Management Plan"** means a State Agency's approved plan for managing its contracts.
 - **"Contract Manager"** means, with respect to a Statewide Contract, the category specialist responsible for the procurement or such other person as appointed by the Chief Procurement Officer to act as the Contract Manager. "Contract Manager" with respect to an Agency Term Contract shall mean the State Agency official appointed by the State Agency to act as the person responsible for contract management.
 - **"Contracting Party"** means a person or legal entity with the independent legal capacity to contract or sue and be sued that has been awarded a contract through proper authority.
-
- **"Contractor"** means an entity that receives a contract as defined in the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - **"Control"** means the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, Immediate Family relationship or otherwise.
 - **"Cooperative Purchasing Agreement"** means a written contract procured for the benefit of two or more governmental entities to make purchases of goods or services.
 - **"Cost Allocation Plan"** means the method of distributing to various programs the costs which benefit more than one program and are not directly assigned as approved by the Department of Finance and Administration.
 - **"Cost-reimbursement Grant"** means a Grant Contract in which one or more payments are made to a Grantee that are limited to reimbursement for actual, reasonable, and necessary costs as determined by the State and in accordance with a State approved Grant Budget.
 - **"Covered State Agency"** means a State Agency that is not exempt from the rules and regulations, or policies and procedures of the Central Procurement Office under the provisions of T.C.A. § 12-3-102.
 - **"Cycle (Credit) Limit"** means the spending limit that restricts the total value of purchases a Cardholder can make in one billing cycle.

D

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“Debarment” means excluding a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor, or subcontractor, as specified by the Chief Procurement Officer.

- **“Delegated Authority”** means a written document, approved in accordance with Central Procurement Office Policy that authorizes a State Agency to award a grant, make a loan consistent with a grant, or procure goods or services on behalf of the state.
 - **“Delegated Grant Authority”** means approval given in accordance with Central Procurement Office Policy to a State Agency to issue grants for an individual program within specified limits and guidelines.
 - **“Delegated Loan Authority”** means approval given in accordance with Central Procurement Office Policy to a State Agency to loan funds and to enter into loan agreements with Contracting Parties in accordance with a State or federally funded program.
 - **“Delegated Purchase Authority”** means the approval given in accordance with Central Procurement Office Policy to a State Agency to purchase goods or services for an individual program, within specified limits and guidelines.
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- **“Delegated State Agency”** means a State Agency that, in accordance with Central Procurement Office Policy, has authority to award a grant, make a loan consistent with a grant, or procure goods or services for an individual program within specified limits and guidelines.
 - **“Department of General Services”** means the State department created and empowered by T.C.A. §§ 4-3-1101, et seq.
 - **“Direct Appropriation Grant”** means a grant listed on the Department of Finance and Administration Division of Budget’s annual direct appropriation list.
 - **“Direct Purchase Order”** means a purchase of goods or services in accordance with section 5.4.7. of the *Procurement Procedures Manual of the Central Procurement Office*.

E

- **“Effective Date of Certification”** means the date on which Procurement Commission staff has determined to be the effective date of any approved certification of goods or services.
- **“Electronic Signature”** means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- **“Emergency Purchases”** means a State Agency purchase made during an actual emergency arising from unforeseen causes without the issuance of a competitive solicitation.
- **“Employee”** means natural persons who are employees of the State of Tennessee and State Agencies.



“Endowment Grant” means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the general public.

- An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.
- **“Energy Efficient Products”** means those products that meet or exceed applicable Energy Efficiency Standards.
- **“Energy Efficiency Standards”** shall have the meaning set forth in Tenn. Code Ann. § 12-3-905
- **“Evaluation Committee”** means the committee comprised of persons who will evaluate responses to a Request for Proposal, Request for Information, or Request for Qualifications. All persons serving on an evaluation committee shall be state employees.
- **“External Approval”** means an approval that is required in addition to a particular State Agency's intradepartmental approvals in order to procure or purchase goods or services.
 - External Approval may be required by applicable law, by contract, or by State business processes.
 - For example, External Approval may include approval from Finance and Administration for IT products and services, the Department of Human Resources for training and staffing, and Finance and Administration, Division of Accounts.

F

- **“Fair Market Value”** means a price for goods or services at which buyers and sellers with a reasonable knowledge of all pertinent facts, and not acting under any compulsion to buy or sell, are willing to transact business.
- **“Fair Pricing”** means pricing that is mutually acceptable to the parties after considering:
 - the level of competition within the marketplace
 - time sensitivities,
 - technical qualifications,
 - the scope of work at issue,
 - economies of scale benefits
 - learning curve costs,



- the presence of proprietary, intangible, personal or real property rights at issue,
 - the scarcity or abundance of manpower and resources, or
 - other considerations
 - The "Fair Pricing" shall be ascertained after benchmarking for time, labor, pricing or deliverables when practicable. Benchmarking shall compare the individual or market basket of goods and services, as applicable, for the contract or amendment at issue in the relevant market place for the relevant period of time.
- **"Fiscal Director"** means that State Agency employee, regardless of his or her particular title, who serves as the Agency's chief financial officer.
 - **"Fully Executed Contract"** means a signed contract that has been duly approved as evidenced by the affixation, or electronic signatures, of all necessary State signatories as required by applicable statutes, rules or Central Procurement Office Policy.

G

- **"Gift"** means a voluntary transfer of goods or services to the State made gratuitously and without consideration.
 - Essential requisites of a gift are:
 - Capacity of the donor to make the gift;
 - Intention of the donor to make the gift;
 - Completed delivery of the gift to or for the State, and
 - Acceptance of the gift by the State.
 - Nothing in this Rule shall be construed to mean that the State must accept any gift.
- **"Goods"** means all property, including, but not limited to, supplies, equipment, materials, printing, and insurance.
 - The term "Goods" does not include leases, acquisitions, or disposals of an interest in real property.
- **"Grant"** means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law.

◦



The term "Grant" does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

- **"Grant Budget"** means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee, a grant recipient or grant subrecipient may be reimbursed.
 - **"Grant Contract"** means a written contract to facilitate an Award to a Grantee or Subrecipient.
 - "Grant Contract" does not include an Award with the primary purpose of procuring an end product for a Grantor State Agency, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be procured on a competitive basis.
 - **"Grant Contract"** means a written contract between the federal government, the State, a Grantee, or a Subrecipient **that contains the terms and conditions governing the parties' duties and responsibilities with respect to an Award.**
-
- **"Grantee" or "Grant Recipient"** means the person or entity awarded a grant.
 - **"Grantor State Agency"** means a State Agency that awards a grant to a person or entity

H

I

- **"Immaterial Defect"** means a defect in a response to a solicitation, which is of no substantial consequence, that is capable of correction through supplemental information or a clarifying response. A defect is immaterial when the effect on price, quantity, or delivery is negligible when contrasted with the total cost or scope of the goods or services being procured. Any defect, the correction of which gives a respondent a competitive advantage vis-à-vis other respondents or prejudicial to one or more respondents, shall not be deemed to be an immaterial defect.
- **"Immediate Family"** means a Central Procurement Office or procuring State Agency employee's spouse, parent, sibling, or child.
- **"Impaired Objectivity"** means when a Person evaluates Responses or contract performance for its own products or services or for the products or services of competitors. Impaired Objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the Person will be harmed through the free and unbiased exercise of that judgment.
- **"Incentive"** means a payment, in addition to that which is required by a contract for minimally required performance, which is explicitly based upon the Contracting Party's performance at a specified level beyond that which is minimally required. 

- **"Interagency Agreement"** means an agreement between two State Agencies, neither of which has the legal capacity to sue and be sued or enter into contracts separate and apart from the State that is reduced to writing, contains an adequate description of the duties of each party, a statement of the term of agreement, and a statement of the maximum amount payable as between the State Agencies.
 - **"Invitation to Bid"** means a procurement method where a contract is awarded to one or more bidders.
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J

K

L

M

- **"Merchant Category Codes" ("MCCs")** means the specific Merchant Category Code, assigned by an acquiring financial institution, that identifies the primary goods or services a supplier provides.
-

N

- **"Necessary Contract Provision"** means a specific clause that must be included in a contract, except as otherwise allowed by a rule exception granted pursuant to applicable law.
- **"No Cost Contract"** means a written contract that does not result in a pecuniary obligation between the State and a Contracting Party.
- **"Notice of Intent to Award"** means a State Agency's written notice to a respondent of a solicitation that the evaluation is complete, that names the respondent who is considered for award, and states that the procurement file is open for public inspection.
- **"Non-responsive"** means a person who has submitted a response to a solicitation that fails to conform in all material respects to the solicitation's requirements.



O

- **"Online Banking Program"** means the Bank's online portal that provides Cardholders, State Agency P-Card Program Coordinators, and the Statewide P-Card Program Administration Team the ability to view and download statement information, update and manage accounts, set limits and permissions, reset passwords, and process Cardholder requests.
- **"Organizational Conflict of Interest"** means, as to Procurements, contracts or proposed contracts with the State, a circumstance arising out of a Contracting Party's existing or past activities, business or financial interests, Immediate Familial relationships, contractual relationships, or organizational structure (e.g., parent entities, subsidiaries, Affiliates, etc.) that results in:
 - Impaired Objectivity of a Contracting Party;
 - An Unfair Competitive Advantage for any Respondent with respect to a Procurement;
 - Biased Ground Rules or;
 - Impropriety, as determined by the Chief Procurement Officer, with respect to any of the State's Procurement or contracts.

P

- **"Parties"** means the State, acting by and through one or more of its agencies, and any person or legal entity, with the legal capacity to enter into contracts and sue and be sued, who is a party to a contract.
- **"P-Card Account"** means the unique account number assigned to a Cardholder as determined by the Bank.
- **"P-Card Program"** means the program established by the State and managed by the Central Procurement Office whereby cardholders and virtual P-Card users make purchases on behalf of the State of Tennessee.
- **"Performance Bond"** means a surety bond issued by an insurance company or bank to secure a Contracting Party's performance of a contract.
- **"Person"** means a natural person or legal entity with the legal capacity to enter into contracts or sue and be sued.
- **"Personnel"** means all employees, evaluators or subject matter experts, whether or not an employee of the Central Procurement Office, a Covered State Agency, or the State, involved in drafting Solicitations, evaluating Responses, providing advice or assistance in connection with evaluating Responses, or 

awarding contracts pursuant to a Procurement on behalf of the Central Procurement Office or a Covered State Agency.

- **"Procurement"** means the act of buying, purchasing, renting, leasing, or otherwise acquiring any goods or services covered by the Rules of the Department of General Services Central Procurement Office. It also includes all functions that pertain to the obtaining of any goods or services, including the description of requirements, selection and solicitation of sources, preparation and award of a contract, and all phases of contract administration.
- **"Procurement Commission"** means the State entity created and empowered by Tenn. Code. Ann. § 4-56-102.
- **"Procurement Commission Staff"** means of the Chief Procurement Officer, staff of the Central Procurement Office as designated by the Chief Procurement Officer, and such other staff as designated by each Procurement Commission member.
- **"Procurement Professional"** means an employee of the Central Procurement Office or a State Agency who has a meaningful role in the procurement of goods or services
 - By way of example only, a procurement professional may include a contract administrator, a solicitation coordinator, or a market analyst.
- **"Procuring Agency"** means the departments, agencies, and entities of the State of Tennessee which make requisitions for or procure goods or services.
- **"Pro Forma Contract"** means the form of contract that is attached to a solicitation that each awarded respondent is required to sign, absent negotiation as set forth in the solicitation.
- **"Proposal"** means a proposer's response to a Central Procurement Office's or Delegated State Agency's solicitation for goods or services.
- **"Proposal Bond"** means a surety bond issued by an insurance company, bank, or other financial institution to ensure that the winning proposer will enter into a contract.
- **"Proposer"** means any person or legal entity with the legal capacity to enter into contracts and sue and be sued who responds to a written solicitation for goods or services issued by the Central Procurement Office or a Delegated State Agency.
- **"Proposer"** expansively includes a "bidder" or "proposer" that is a person or legal entity that has properly registered as required by the State. The terms "bidder" and "proposer" may be used interchangeably for the term "proposer".
- **"Proprietary"** means a good or service that is used, produced, or marketed under exclusive legal right of the inventor, maker, or service provider that is protected under trade secret, patent, trademark, or copyright law.
- **"Proprietary Procurement"** means a procurement of a service or a product that is manufactured and marketed by a person or persons having the exclusive right to provide the service or manufacture or sell the product.



“Protest” means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office.

- **“Protest Committee”** means the committee created and empowered under Tenn. Code. Ann. § 4-56-103.
- **“Purchase Order”** means a document issued by the Central Procurement Office or a State Agency to a Contracting Party authorizing a purchase.
 - Upon delivery to the Contracting Party, a “purchase order” becomes a binding contract on both parties.
- **“Purchasing Card” or “P-Card”** means a commercial card that allows organizations to take advantage of the existing credit card infrastructure to make electronic payments for goods or services.
 - A P-Card is similar to a consumer credit card, but the card-using organization must pay the card issuer in full each month.

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- **“Purchasing Card Profile”** means the unique profile associated with a Cardholder that contains monetary or Merchant Category Codes (MCC) limits on the Cardholder’s ability to make purchases on behalf of the State.

Q

- **“Qualified Respondents”** mean the Respondents that are selected to be within the Competitive Range.

R

- **“Record”** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- **“Request for Information”** (“RFI”) means a solicitation sent to a broad base of potential suppliers for the purpose of developing strategy, building a database, or preparing for a Request for Proposals or a Request for Qualifications.
- **“Request for Proposals”** (“RFP”) means a written solicitation for written proposals to provide goods or services to the State.
- **“Request for Qualifications”** (“RFQ”) means a written solicitation containing a list of qualifications that must be met before a vendor may propose in response to a Request for Proposals.
 - A written response from a vendor is the appropriate response to a Request for Qualifications.



- **"Respondent"** means a natural person or legal entity with the capacity to contract or sue and be sued who has submitted a written response to a solicitation.
- **"Response"** means a written response to a solicitation for goods or services.
- **"Responsible"** with respect to a Respondent or a Proposer means a person who has the capacity in all material respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.
- **"Responsive"** with respect to a Respondent or a Proposer means a person who has submitted a proposal, which conforms in all material respects, to the terms of a Solicitation.
- **"Revenue Contract"** means a written contract obligating a State Agency to provide specific deliverable services for monetary compensation.
- **"Reverse Auction"** shall have the meaning set forth in Tenn. Code Ann. § 12-3-513.
- **"Review Process"** means the procedures utilized by the Central Procurement Office when approving or disapproving contracts.
- **"Rule Exception"** means a request to relax the strict application of certain requirements of these Rules or applicable statute as allowed by applicable law.
- **"Rules"** means the Comprehensive Rules and Regulations concerning the procurement of goods and services adopted by the Procurement Commission of the State of Tennessee.

S

- **"Scope of Work"** means a detailed, written description of the conceptual requirements for the goods or services that are the subject of the procurement. The scope of work should detail what is required of the party to whom a contract award is made.
- **"Sealed Proposal"** means a respondent's proposal, which is delivered to the State in a sealed envelope in response to the Central Procurement Office's or a State Agency's solicitation.
- **"Services"** means all personal, professional, and consulting services and agreements procured by the State and formalized by contract.
- **"Signature" or "signed"** includes a mark, the name being written near the mark and witnessed, or any other symbol or methodology executed or adopted by a party with intention to authenticate a writing or record, regardless of being witnessed.
- **"Single Transaction Limit" ("STL")** means the maximum dollar limit, per purchase transaction, that can be assigned to the physical P-Card. The STL is assigned per Cardholder at the discretion of the Fiscal Director. This Policy establishes the STL for the designated State Agency Central Fiscal Office P-Card as up to fifty thousand dollars (\$50,000) and for all other physical P-Cards as up to ten thousand dollars (\$10,000) without Statewide P-Card Program Administrator approval. 

- **“Software as a Service”** (“SaaS”) means a method of software deployment whereby applications are owned, delivered, and managed remotely by one or more providers over the Internet or an intranet, and licensed to customers as an on-demand service through a usage-based model sometimes called a “subscription schedule.”
 - SaaS, however, shall not be treated as a Subscription as that term is defined by the State.

- **“Sole Source Procurement”** means a procurement for which only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility or a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

- **“Solicitation”** means a written document that facilitates the award of a Contract to Contracting Parties for goods or services.
 - Examples of solicitations include, but are not limited to, an Invitation to Bid, a Request for Information, a Request for Proposals and a Request for Qualifications.

- **“Solicitation Coordinator”** means the procurement professionals within the Central Procurement Office or State Agencies who act as the primary points of contact and manage the procurement.
 - Only those State Agency procurement professionals who have gone through training and certification by the Central Procurement Office may act as a Solicitation Coordinator.

- **“Special Delegated Authority for a Declared Disaster”** means approval given by the Chief Procurement Officer and the Comptroller of the Treasury to the Tennessee Emergency Management Agency to execute grant contracts related to a specific federal or state declared disaster.

- **“Special Request”** means the purchase of goods or services within the scope of a Contract that is not specified within Edison.

- **“Special Procurement”** means a contract procurement without a solicitation, or an amendment to an Original Contract, where the Chief Procurement Officer has determined that the goods or services involve, by way of example only:
 - Equipment or Service for which there is no comparably competitive product;
 - Public utility services from natural or regulated monopolies;
 - A component or replacement part or service for which there is no commercially available substitute and which can be obtained only direct from the manufacturer or provider;
 - An item where compatibility is the overriding consideration (e.g. computer operating software or hardware enhancements for an existing system);
 - The ability of a vendor to meet a necessary condition dictated by unique circumstances (e.g., the need for immediate delivery or repairs at a particular location or emergency situations); or
 - Competitatively alternatives that are impractical, or will be to the detriment of the State of Tennessee.



- **“Specification”** means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item.
 - "Specification" includes, as appropriate, requirements for inspecting, testing or preparing a supply, service or construction item for delivery.
- **“State”** means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.
- **“State Agency”** means the departments, agencies, and entities of the State of Tennessee.
- **“State Agency Approver”** means the State Agency Employee who approves P-Card or Virtual P-Card Transactions.
- **“State Agency P-Card Program Coordinator”** means the employee within the State Agency who manages the P-Card Program at the State Agency level.
- **“State Agency Reconciler”** means the State Agency employee responsible for all the functions associated with post-purchase processing P-Card Transactions including account allocation and providing a business purpose when required.
- **“State Architect”** means the person who oversees the Office of the State Architect.
- **“State Building Commission” or “SBC”** means the entity created pursuant to Tenn. Code Ann. § 4-15-101.
- **“Statewide P-Card Program Administration Team”** means the team within the Central Procurement Office that is responsible for overseeing the P-Card Program.
- **“Statewide P-Card Program Administrator”** means the employee within the Central Procurement Office who is responsible for managing and overseeing the P-Card Program.
- **“Statewide Contract”** means a contract for goods or services established by the Chief Procurement Officer that all State Agencies must utilize and that may be used by Tennessee local governments- The board of trustees of the University of Tennessee system, the Tennessee board of regents system, the state university boards; private nonprofit institutions of higher education chartered in Tennessee; or any corporation which is exempted from taxation under 26 U.S.C. § 26 U.S.C. 501(c)(3) and which contracts with the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities to provide services to the public (Tenn. Code Ann. § 33-2-1001).
- **“Subrecipient”** is as defined in Office of Management and Budget (OMB) Circular A-133.
 - "Subrecipient" means a non-federal entity that receives an Award from a pass-through entity to carry out part of a federal or state program; but does not include an individual that is a beneficiary of such program.
 - A Subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.



"Subscription " means expenditures, user fees, or other charges by departments, agencies, and entities of the State of Tennessee for:

- 1. Newspaper, magazines, periodicals, books, films, instructional videos, read-only data, or other publications (i.e., any publication printed, microfilmed, photocopied, or otherwise recorded for auditory or visual use), including trade, business, professional, or other technical periodicals; or
 - 2. Access to such publications in their online or digital form, including access by means of a vendor-provided application that is necessary for or facilities use of publications or data.
 - A subscription does not include SaaS licenses or agreements, or any other service, even when the payment methodology is called a "subscription schedule".
 - A subscription is not a limited-time license.
- **"Supplier"** means a person or legal entity identified in Edison who has the legal capacity to enter into contracts and sue and be sued who supplies goods or services to the State through a contract or a purchase order.
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- A "Supplier" includes all persons or legal entities referenced as "vendors" in this Glossary.
- **"Suspension"** means a temporary or limited exclusion of a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor, or subcontractor, pending completion of a State investigation or administrative or judicial proceedings, as specified by the Chief Procurement Officer.
-

T

- **"Target Pricing"** means a negotiation tool whereby the State provides respondents with the price the State expects to pay for a good or service.
- **"Tennessee Central Nonprofit Agency"** means the agency designated by the Committee [the advisory committee for purchase from the blind and other severely disabled] to facilitate the distribution, by direct allocation, subcontract or any other means, of orders from state government for commodities and services on the procurement list among work centers for the blind and agencies serving individuals with severe disabilities.
- **"Term Contract"** means a contract for goods or services in which a source or sources of supply are established for a specified period of time at an agreed upon price or prices.
- **"Transaction"** means the purchase of goods or services through use of a P-Card or Virtual P-Card.
- **"TRICOR"** Tennessee Rehabilitative Initiative in Correction- produces, assembles or manufactures products with the labor of convicts confined within institutions or elsewhere employed within the State.



U

- **"Unfair Competitive Advantage"** means a situation that exists when a Person competing for the award of a contract has obtained:
 - Access to proprietary or confidential State information, or other State information that is not available to the public or other Respondents, and that would assist Respondents in responding to a Solicitation or in obtaining the contract; or
 - Scoring criteria or points allocation information, or other source selection information, that is relevant to the contract but is not available to all Respondents to a Solicitation and that would assist the Respondents in responding to a Solicitation or in obtaining the contract.
 - **"Utility Contract"** – means a contract for telephone, telegraph, electric light, gas, power, postal, and other services for which a rate for the use thereof has been established by a public authority.
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V

- **"Vendor"** means a person or legal entity with the legal capacity to enter into contracts and sue and be sued who provides goods or services to the State through a contract or a purchase order.
 - **"Virtual Purchasing Card" or "Virtual P-Card"** means the unique credit card account number, embedded within Edison, which is assigned to a State Agency for payment of suppliers authorized to accept P-Card as the form of payment for approved Edison purchase orders.
 - **"Virtual P-Card User" or "User"** means the State Agency employee who has a buyer or e-procurement role in Edison, has undergone training on reconciliation, and is authorized to use a Virtual P-Card to initiate payment transactions on behalf of the State.
-

W

- **"Work Center" for the blind**– shall have the meaning set forth in Tenn. Code Ann. § 71-4-702(9). Which means any agency that:
 - (A) Is organized under the laws of the state, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;
 - (B) Complies with the applicable occupational health and safety standards prescribed by the secretary of labor of the United States;



(C) In the production of commodities and the provision of services, whether or not the commodities or services are procured as provided in this part, during the fiscal year employs blind individuals for a minimum of seventy-five percent (75%), or in accordance with the percentage of direct labor required under the terms and conditions of the Javits-Wagoner-O'Day Act, P.L. 92-28, compiled in 41 U.S.C. § 46 et seq., or whichever is lesser, of the man-hours of direct labor required for the production or provision of commodities or services; and

(D) Meets the criteria for determining nonprofit status under title 48, chapter 51, part 1, and is registered in good standing with the office of the secretary of state.

X

Y

Z

