



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

- AGENDA -

PROCUREMENT COMMISSION MEETING #024
THURSDAY, FEBRUARY 16, 2017 - 1:30 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

**MINUTES OF NOVEMBER 1, 2016
MEETING**

**MINUTES
PROCUREMENT COMMISSION MEETING #023
TUESDAY, NOVEMBER 1, 2016 – 10:00 A.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:

Shannon Howell, Tony Bybee, Charissa Taylor, Paul Krivacka, Jenny Young, Lindsey Lattner, Meryl McVicker, Don Ivancic, Thad Watkins, Chris Ivey, John Bissell, Tim Drown, Laura Kinard, Jamil Moore, Kyle Hunter, 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 August 18, 2016 Procurement Commission Meeting.

Commissioner Martin presented the August 18, 2016, minutes for approval and asked if there were any corrections or additions. Comptroller Wilson stated that his office had reviewed the minutes and made a motion to approve the minutes from the August 18, 2016, Procurement Commission meeting as presented. The motion was seconded by Commissioner Oglesby; 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.

(1) Amendment Request

Mr. Krivacka presented the following points with regard to the Amendment Request:

- Based on agency feedback and in an effort to improve clarity and consistency, a change is proposed to question #5 to request the original contract effective date, not the amendment effective date.
- Updates are also requested to change references to Office for Information Resources ("OIR") to Strategic Technology Solutions ("STS").

Comptroller Wilson asked if these changes were primarily clerical in nature and Mr. Krivacka confirmed that the changes were simply housekeeping items.

Seeing no other questions or comments, Comptroller Wilson made a motion to approve the Amendment Request as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(2) Edison Contract Entry Record Status Reset Request Model

Mr. Krivacka presented the following points with regard to the Edison Contract Entry Record Status Reset Request Model:

- This Model document is used by some agencies to request a change to the Edison Contract Record that does not amount to an amendment.
- For example, if an accounting code was entered incorrectly on the budget summary cover sheet the agency would submit the Edison Contract Entry Record Status Request Model or another written request, such as an email to their sourcing analyst or procurement professional, to document the requested change.
- This Model is a carry-over from the previous Office of Contracts Review ("OCR") and the requested change is to update the language for those who still use it to comply with the new Edison document naming convention model and remove references to OCR.

Seeing no other questions or comments, Comptroller Wilson made a motion to approve the Edison Contract Entry Record Status Reset Request Model as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(3) Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request

Mr. Krivacka presented the following points with regard to the Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request:

- Public Chapter No. 1009 was adopted at the last legislative session and amended the Open Records Act, making the identity of a vendor that provides goods and services to the State used to protect government property, government employee information, or citizen information confidential and not subject to disclosure under the Open Records Act.
- This requested change adds a check box before the STS Endorsement for them to identify whether or not this Confidentiality exception to the Open Records Act applies.
- The purpose of the change is to flag those contracts that contain confidential information and the STS Pre-Approval Endorsement Request would be saved in the Edison system. Going forward, any person who receives an Open Records Request would first check Edison for the STS Pre-Approval Endorsement Request form and see

if there is information flagged as confidential and then respond appropriately to the Open Records Request.

- This will also be beneficial when packets are being prepared for review by the Fiscal Review Committee as any confidential information will be flagged to indicate what should not be included in the Fiscal Review Committee presentation.

Comptroller Wilson stated that his office had discussed this item and concurs that this proposal is the best way to deal with the statute as it is today. Comptroller Wilson commented that this is a difficult issue to deal with and made a motion to approve the Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(4) *Procurement Procedures Manual of the Central Procurement Office* – Section 6.7. -Purchase Order Exemptions

Mr. Krivacka presented the following points with regard to the *Procurement Procedures Manual of the Central Procurement Office* – Section 6.7. -Purchase Order Exemptions:

- This is another area where the Central Procurement Office ("CPO") is trying to bring some clarity to what is sometimes a gray area of procurement practice.
- This section of the Manual identifies Purchase Order ("PO") Exemptions, which means those instances where the transaction does not require a purchase order or a contract.
- The sentence "no purchase order is required when using the P-card in compliance with the p-card policy" has caused some confusion in the past. As a result, the CPO is recommending its deletion. A transaction may be exempt from the requirements of a PO or a contract, but not simply because someone used a P-Card as the payment method. A P-Card is simply a form of payment.
- The proposed change includes a formatting change that will remove some asterisks that had caused some confusion. The Manual will now have two additional sections that reflect a designation for small purchases and informal purchases.
- Postage charges have been clarified. Postage charges in connection with the use of postage meter machines owned or leased by the State have been moved to the section where the \$10,000 limit does not apply.
- This proposal also clarifies that sponsorships may be an example of an advertisement but it is not by itself a stand-alone exemption.

Comptroller Wilson made a motion to approve *Procurement Procedures Manual of the Central Procurement Office* – Section 6.7. - Purchase Order Exemptions as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(5) Optional Contract Clause – Prison Rape Elimination Act ("PREA")

Mr. Krivacka summarized the following points with regard to the Optional Contract Clause – Prison Rape Elimination Act ("PREA"):

- The Department of Corrections requested that the Prison Rape Elimination Act contract clause be added as an optional term and condition in all CPO contract models and templates and the configurator. This is merely an adoption of existing federal law.

Seeing no questions or discussion, Comptroller Wilson made a motion to approve the Optional Contract Clause – Prison Rape Elimination Act (“PREA”) as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(6) Division of Health Care Finance & Administration (“HCFA”) Liquidated Damages Request

Mr. Krivacka summarized the following points with regard to the Division of Health Care Finance & Administration (“HCFA”) Liquidated Damages Request:

- This HCFA Liquidated Damages Provision was discussed at length by CPO and Office of the Comptroller of the Treasury (“COT”) and it was agreed that it will apply only to HCFA contracts.
- It is recognized that HCFA has unique and sophisticated contracts that require a different approach to managing contract non-compliance; therefore, the CPO urges adoption of this optional provision.

Comptroller Wilson indicated that COT had a variety of concerns regarding this matter and some things might have to be decided, but since it is limited to HCFA and HCFA really wants this, it probably does make sense. Comptroller Wilson made a motion to approve the Division of Health Care Finance & Administration (“HCFA”) Liquidated Damages Request as presented. Commissioner Oglesby stated that he had no issues with the item and seconded the motion. Commissioner Martin stated that he had no issues with the item; whereupon the item was approved.

(7) Liquidated Damages Request

Mr. Krivacka summarized the following points with regard to the Liquidated Damages Request:

- Each time an agency requests to have liquidated damages in a contract the agency is required to submit a request form to memorialize how they determined the liquidated damages amount, why they need liquidated damages in the contract, and why the standard contract language is inadequate.
- There are no substantive changes to the document; the proposal is simply to reformat the form to make it more user-friendly.

Seeing no questions or comments, Comptroller Wilson made a motion to approve the Liquidated Damages Request as presented. Commissioner Oglesby seconded the motion; whereupon the item was approved.

Mr. Krivacka stated that agenda items (8) and (9) are related and would be presented together.

(8) Request for Qualifications Template – Section A. Mandatory Requirement Items

(9) Request for Proposal Template – Section A. Mandatory Requirements Items

Mr. Krivacka highlighted the following proposed changes with regard to agenda items (8) Request for Qualifications Template – Section A. Mandatory Requirement Items and (9) Request for Proposal Template – Section A. Mandatory Requirement Items:

- Agenda Items (8) and (9) both address the mandatory requirement items used to evaluate a potential respondent's financial ability.
- The items that are currently included within the Standard Mandatory Requirement Items have been moved to become optional.
- There are now additional instructions for the solicitation coordinator to consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or services being procured.
- This adds flexibility for the solicitation coordinator to choose the most appropriate options, but they must include at least one of the options to determine financial ability to perform.

Commissioner Oglesby asked if this was the item that was previously deferred from an earlier Procurement Commission meeting. Mr. Krivacka confirmed that Commissioner Oglesby was correct.

Commissioner Martin asked if the Procurement Commission members were agreeable to hearing agenda items (8) and (9) together. Comptroller Wilson moved to review both items together.

Thad Watkins, Department of General Services General Counsel, stated that he would like to add to Commissioner Oglesby's comment that these items had been discussed at length and deferred from a previous Procurement Commission meeting. Mr. Watkins continued that a great deal of work had been done by the CPO in conjunction with other departments since that meeting to develop this proposed flexible approach to the subject matter.

Seeing no other questions or comments, Comptroller Wilson made a motion to approve agenda items (8) Request for Qualifications Template – Section A. Mandatory Requirement Items and (9) Request for Proposal Template – Section A. Mandatory Requirement Items as presented. Commissioner Oglesby seconded the motion; whereupon the items were approved.

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

IV. Reports:

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

- 1) Certification Related Items – lists any recertifications, new certifications, and decertifications since last Procurement Commission meeting
- 2) Limitation of Liability – lists those granted since last Procurement Commission meeting
- 3) Correction of Errors – lists corrections since last Procurement Commission meeting

4) Memorandum of Understanding – lists activity since last Procurement Commission meeting

Mr. Perry noted that some corrections were made to the Certifications report after the agenda packet had been distributed. Mr. Perry added that the hard copies of the Certifications report provided for Commission members at the meeting reflected the corrections as approved by the Certifications Committee.

Commissioner Martin asked if all members had received the corrected hard copy of the Certification report and all members responded they had received the revised hard copy. Commissioner Martin asked if the Commission simply needed to acknowledge receipt of the reports and Mr. Perry responded that was correct.

Comptroller Wilson stated that he thought the Commission members should look at the Limitations of Liability report at each meeting. Comptroller Wilson stated that his office had approved all items on the Limitations of Liability report but these items can be tricky and should be reviewed by Commission members.

Commissioner Martin agreed that Comptroller Wilson made a good point and acknowledged receipt of all four reports.

V. Other Business.

Commissioner Martin stated that the Commission was being asked to consent to cancel the November 10 Procurement Commission meeting and asked for a motion to such affect. Comptroller Wilson made a motion to give consent to cancel the November 10 Procurement Commission meeting. The motion was seconded by Commissioner Oglesby. Comptroller Wilson requested a roll call vote and all members gave consent to cancel the November 10, 2016 Procurement Commission meeting.

VI. Adjournment.

Seeing no other business to be heard, a motion to adjourn was made by Comptroller Wilson and seconded by Commissioner Oglesby; whereupon the November 1, 2016 Procurement Commission meeting was adjourned.

***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE***

**SECTION 10.11, STATE SECURITY
CONFIDENTIAL INFORMATION**

REQUEST: Add a new section to the *Procurement Procedures Manual of the Central Procurement Office*, “State Security Confidential Information.”

10.11. *State Security Confidential Information.*

10.11.1. *Purpose.*

The Public Records Act includes numerous exceptions to the general proposition that all state records shall “be open for personal inspection by any citizen of this state,” as provided for in Tenn. Code Ann. § 10-7-503. One such exception is Tenn. Code Ann. § 10-7-504(i), which requires the state to keep as confidential “[i]nformation that would allow a person to obtain unauthorized access to confidential information or to government property.” Information that is confidential under subsection (i) includes but is not limited to: A.) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; B.) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; C.) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property; and D.) The identity of a vendor that provides goods and services used to protect government property, government employee information, or citizen information to the State. This section provides guidance as to the procedures a procurement professional should consider to comply with this requirement.

10.11.2. *Process.*

The STS Pre-Approval Endorsement includes, as part of the endorsement, an assessment as to whether the exception under Tenn. Code Ann. § 10-7-504(i), as it relates to information technology, applies to the solicitation or contract under review. If STS determines that the security exception applies, then a procurement professional should consider the following precautions to safeguard the confidential information.

- **Advertising the Solicitation:** A procurement professional should, after consultation with STS and CPO Legal, publicly advertise a copy of the solicitation, in accordance with Tenn. Code Ann. § 12-3-502(a). Each procurement professional should review the STS endorsement before publicly advertising the solicitation to determine whether the solicitation contains confidential information. Confidential information should be redacted prior to publicly advertising the solicitation. Once redacted, the procurement professional should publicly advertise a copy of the solicitation without the confidential information. Only those respondents who sign a non-disclosure agreement will have access to the confidential information via secure URL or similar protected, limited access.

Notice of Intent to Award and Open File Period: During the open file period, the procurement professional must take appropriate safeguards to protect confidential information, including the respondents’ identities. This may be accomplished by

randomly assigning a numeric value to reference the respondents' names and identities. Note: "Documents concerning the cost of protecting government property or electronic information shall **not** be confidential."

- **Contract Entry:** The procurement professional is responsible for making the appropriate notation in Edison to reflect the existence of confidential information.
- **Other:** If there is a Protest, a Public Records Request, or Report concerning the confidential information, the Solicitation Coordinator should consult with STS and CPO Legal concerning what information should be redacted consistent with Tenn. Code Ann. § 10-7-504(i). Similarly, if the subject contract is a Statewide Contract, then the information publicly available online should be limited accordingly. The Solicitation Coordinator will be the contact person for all requests.

10.11.3. *Permissible Disclosures.*

Tenn. Code Ann. § 10-7-504(i)(3)(D) authorizes a governmental entity to "upon request, provide the identity of a vendor to the comptroller of the treasury and the fiscal review committee of the general assembly." A procurement professional should notify the Fiscal Review Committee or the Comptroller of the Treasury that the confidential provision is applicable so they may exercise reasonable care in maintaining the confidentiality of the information, including the identity of the vendor.

**INTERAGENCY AGREEMENT
SUMMARY AND INTERAGENCY GRANT
AGREEMENT SUMMARY SHEETS**

REQUEST: Amend the Summary Cover Sheet included on the Interagency Agreement and the Interagency Agreement – Grant Model as follows:

					
INTERAGENCY AGREEMENT SUMMARY (Interagency Agreement between state agencies, including the University of Tennessee or Board of Regents colleges and universities)					
Begin Date		End Date		Agency Tracking #	
				-	
Contracting State Agency Name				Edison Supplier ID	
CFDA #					
Service Caption					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
TOTAL:					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - IA</i>	
Speed Chart (optional)		Account Code (optional)			



INTERAGENCY GRANT AGREEMENT COVER SHEET

(cost reimbursement grant agreement between two Tennessee state agencies, University of Tennessee, or Board of Regents colleges and universities)

Begin Date	End Date	Agency Tracking #	Edison ID
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Grantee Legal Entity Name	Edison Supplier ID
----------------------------------	---------------------------

Subrecipient or Contractor <input type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor	CFDA #
--	---------------

Service Caption (one line only)

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
TOTAL:					

<p>Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.</p>	<p><i>CPO USE - IG</i></p>	
		Budget Officer Signature
		<table border="1"> <tr> <td>Speed Chart (optional)</td> <td>Account Code (optional)</td> </tr> </table>
Speed Chart (optional)	Account Code (optional)	

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 Central Procurement Office 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.

**MODEL INSTRUCTIONS FOR GU-RV,
GU-NC, GU, GU-USGS, RV, AND NC**

REQUEST: Revise the second instructional paragraph included in the following models: GU-RV, GU-NC, GU, GU-USGS, RV, and NC as follows. Include the asterisk (*) note in the No Cost (NC) and Revenue (RV) models only.

Insignificant deviations from this model, while always subject to disapproval, will typically not require a specific rule exception unless an oversight examiner requires separate documentation in a particular instance. If a formal rule exception request is not required, oversight approval of the document will constitute selected rule exception(s) as may be necessary. 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.

*Use of this model shall require an approved Special Contract Request.

**GOVERNMENTAL GRANT (GG) AND
GRANT (GR) TEMPLATES – C.6,
OPTION 5, BUDGET LINE-ITEM ISSUE**

REQUEST: Revise section C.6 Option 5 of the Governmental Grant (GG) Contract Template and Grant (GR) Contract Template as follows:

Option 5: Grantee May Request Budget Line-Item Revisions

Agencies may add the following Section as appropriate:

- C.6. Budget Line-item: Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may request revisions of Grant Budget line-items by letter, giving full details supporting such request, provided that such revisions do not increase total Grant Budget amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are explicitly set forth. Any increase in the total Grant Budget amount shall require a Grant Contract amendment.

**GOVERNMENTAL GRANT (GG), GRANT
(GR), AND FA TEMPLATES – IRAN
DIVESTMENT ACT**

REQUEST: Add a new provision to the Governmental Grant (GG) Contract Template and Grant (GR) Contract Template to address the Iran Divestment Act and revise the language in the FA Template to mirror this new language.

GR and GG Contract Templates:

D.33. 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 Grant Contract. The Grantee 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.

FA Template:

D.31. 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.

**CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2013-007, *GRANT
MANAGEMENT AND SUBRECIPIENT
MONITORING POLICY AND
PROCEDURES***

REQUEST: Revise sections 3, 6, and 9.2.3. of the Central Procurement Office Policy 2013-007 Grant Management and Subrecipient Monitoring Policy and Procedures as follows:

3. Definitions:

“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.

6. Cognizant Agency Determination Process.

The Cognizant State Agency shall be responsible for approving the Subrecipient’s Cost Allocation Plan. Other State Agencies that grant funds to the Subrecipient must abide by the Cost Allocation Plan approved by the Cognizant State Agency. The Cognizant State Agency is the State Agency whose funds comprise the greatest percentage of State grant funds received by the Subrecipient. The Central Procurement Office determines the Cognizant State Agency for each Subrecipient. Once assigned, the term of responsibility shall continue indefinitely, although a State Agency may submit to the Central Procurement Office a written request and justification for a Cognizant State Agency redetermination.

9.2.3 Monitoring Activities

The Grantor State Agency’s monitoring of the Subrecipients identified in its annual monitoring plan shall include:

- Any program-specific monitoring requirements;
- All applicable requirements of Title VI of the *Civil Rights Act of 1964*;
- Reviewing any reports required by 2 C.F.R. §§ 200.328 – 200.329;
- Reviewing financial and programmatic reports required by the Grant Contract; and
- Ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award that the Grantor State Agency detected and communicated to the Subrecipient.

To the extent possible, there should be a separation of duties between monitoring staff and program operations staff to allow for independence and objectivity. Possible conflicts of interest should be disclosed in agency monitoring plans.

***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE***

SECTION 6.9, MEETING EXPENSES

REQUEST: Add the following as a new section to the *Procurement Procedures Manual of the Central Procurement Office*.

6. Exceptions to Competitive Procurements.

6.9. Meeting Expenses.

Meeting expenses may be procured under the same rules, policies, and procedures applicable for exercising Local Purchase Authority. A Special Contract Request will not be required. All terms and conditions for space rental should be reviewed by Agency legal counsel.

**FA CONTRACT TEMPLATE –
OPTIONAL LANGUAGE FOR
PROTECTION OF FTI**

REQUEST: Revise the optional text related to the Protection of Federal Tax Information included as part of the FA Contract Template as follows.

Protection of Federal Tax Information

Add one of the following options below *as a separate attachment* to the Contract for Contractors having access to Federal Tax Information ("FTI") during performance of the Contract. If unsure whether to include one of the options below, contact your agency's disclosure officer and legal counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to hard copies of FTI. Use Option #2 when the Contractor may have access to electronic forms of FTI.

Option 1

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as

confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.

- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (7) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (8) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages,

plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or entity not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Option 2

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security

Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

- (8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (11) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by

the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

**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

November

1. Item No. 763.A96
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation
TDOT Region 4, Engineering Building, Boswell Complex 5334 Boswell Ave., Memphis, Tennessee.
Annual Price: \$ 8,373.48 or \$0.9775 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2016 – 11/30/2017

2. Item No. 763.A98
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation
TDOT Region 4, Boswell Help Building, Boswell Complex 5336 Boswell Ave., Memphis, Tennessee.
Annual Price: \$ 3,813.96 annually or \$2.98 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2016 – 11/30/2017

3. Item No. 763.A99
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation
TDOT Region 4, Regional Transportation Management Center, Boswell Complex 5344 Boswell Ave., Memphis, Tennessee.
Annual Price: \$21,799.32 annually or \$ 1.6617 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2016 – 11/30/2017

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

4. 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 annually or \$194.69 per cycle per year.
 No price increase requested.
 Satisfaction: No complaints have been filed.
 Re-Certification Requested for Period of 12/01/2016 – 11/30/2017

5. 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.
 Re-Certification Requested for Period of 12/01/2016 – 11/30/2017

6. Item No. 763.A168
 Service: Premium Coffee
 Agency/Location: Statewide Contract #919
 Annual Price: \$2,434.80 September 2015 through August 2016
 No price increase requested.
 Satisfaction: No complaints have been filed.
 Re-Certification Requested for Period of 12/01/2016 – 11/30/2017

December

1. Item No. 763.19b
 Service: Janitorial Services
 Agency/Location: Tennessee Military Department
 Tennessee Army National Guard, 117th Regional Training Institute, Building 603,
 Smyrna, Tennessee.
 Annual Price: \$15,265.92 annually or \$1.827816 per square foot per year.
 No price increase requested.
 Satisfaction: No complaints have been filed.
 Re-Certification Requested for Period of 01/01/2017 – 12/31/2017

2. Item No. 763.A164
 Service: Janitorial Services
 Agency/Location: Tennessee Military Department

Tennessee Emergency Management Agency, 1510 R.E. Bailey Bypass, Jackson, Tennessee.

Annual Price: \$6,674.40 annually or \$1.0303 per square foot per year.

No price increase requested.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 01/01/2017 – 12/31/2017

3. Item No. 763.A178

Service: Janitorial Services

Agency/Location: Tennessee Department of Safety

Tennessee Highway Patrol, Truck Inspection Site (I-65 North), 5753 Highway 31W, Portland, Tennessee.

Annual Price: \$6,084.29 annually or \$2.03 per square foot per year.

No price increase requested.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 01/01/2017 – 12/31/2017

ADDENDUM

1. Item No. 763.A170

Service: Used Cooking Oil Services (Revenue Producing)

Agency/Location: Statewide Contract #922

Total Annual Rebates from Either the Certification Effective Date or the Annual Recertification date: \$450.23 September 2015

Tier 3 has been eliminated and is no longer used for rebate pricing.

Satisfaction: No complaints have been filed.

Addendum to Certification Requested for Period of 12/01/2016 – 09/30/2017

LIMITATION OF LIABILITY REPORT

**Approved Limitation of Liability Requests
for the Time Period October 1, 2016 to February 1, 2017**

TRACKING	CALENDAR YEAR	ID	LOGGED	STATUS	STATUS DATE	SERVICE	CONTRACTING AGENCY	BASIS FOR REQUEST	COT APPROVAL OF REQUEST
32110	16	7474	10/3/2016	APPROVED	10/3/2016	PERFORMANCE MANAGEMENT SOFTWARE	GENERAL SERVICES	CONTRACTOR'S LIABILITY FOR ALL CLAIMS UNDER CONTRACT SHALL BE LIMITED TO AN AMOUNT EQUAL TO TWO (2) TIMES THE MAXIMUM LIABILITY AMOUNT. CONTRACTOR DISCLAIMS INDIRECT AND CONSEQUENTIAL DAMAGES	10/4/2016
33600-20162	16	7479	10/3/2016	APPROVED	10/4/2016	PARTICIPATION IN THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS)	FINANCIAL INSTITUTIONS	CONTRACTOR'S LIABILITY FOR ALL DAMAGES ARISING FROM THE USE OF OR INABILITY TO USE THE SYSTEM WILL BE LIMITED TO THE SYSTEM PROCESSING FEES RETAINED BY THE CONTRACTOR IN CONNECTION WITH THE SERVICES PROVIDED BY THE CONTRACT TO STATE AGENCY DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING STATE AGENCY'S NOTIFICATION OF SUCH CLAIM.	10/12/2016
31701-03165	17	8016	1/30/2017	APPROVED	1/30/2017	NETTN SERVICES	FINANCE AND ADMINISTRATION	CONTRACTOR'S LIABILITY FOR ALL CLAIMS UNDER CONTRACT SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE (1) TIMES THE MAXIMUM LIABILITY AMOUNT	1/31/2017

CORRECTION OF ERRORS REPORT

(NOTHING TO REPORT THIS PERIOD)

MEMORANDUM OF UNDERSTANDING REPORT

Number	SWC # / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
86	48765	Utility Data Energy Management	Chris Romaine	EnergyCAP Inc.	Utility Data Energy Management	11/30/2016	Update payment schedule