

**STATE OF TENNESSEE
PROCUREMENT COMMISSION**

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- AGENDA -

**PROCUREMENT COMMISSION MEETING #040
THURSDAY, JANUARY 20, 2022, 2:00 p.m.
NASHVILLE ROOM AND WEBEX**

Agenda Item	Page #
I. Call to Order	--
II. Approval of Minutes from October 21, 2021 Meeting.....	3
III. Procurement Commission Agenda Items Overview.....	8
IV. Consent Agenda Items:	
(1) Comptroller Required Review.....	11
(2) CPO Policy Number 2013-002 Procurement Methods, Oral Presentation.....	13
(3) Federal Award Identification Worksheet ("FAIW")	15
V. New Business:	
Proposed changes to the following Central Procurement Office documents (see attached documentation):	
(1) Grant Contract ("GR") and Governmental Grant ("GG") Contract Templates – Track Changes to current	17
(2) Grant Contract ("GR") and Governmental Grant ("GG") Contract Templates – New Optional Terms	21
(3) Request for Proposals ("RFP") Template, Option: Electronic Submission of Proposals.....	24
VI. Approval of Human Resource Agency Procedures:	
(1) First Tennessee Human Resource Agency (FTHRA).....	82
VII. Reports: (see attached documentation)	
(1) Certification Related Items (CMRA).....	143
(2) Limitation of Liability.....	149
(3) Memorandum of Understanding (MOU).....	151
VIII. Other Business	
(1) Consent to Cancel February 17, 2022 Procurement Commission Meeting - next meeting would be March 17, 2022.....	--
VII. Adjournment	--

BUTCH ELEY
Commissioner of Finance & Administration

JASON MUMPOWER
Comptroller of the Treasury

CHRISTI BRANSCOM, Chairman
Commissioner of General Services

MICHAEL F. PERRY
Chief Procurement Officer

**MINUTES OF JANUARY 20, 2022
MEETING**

MINUTES
PROCUREMENT COMMISSION MEETING #039
THURSDAY, October 21, 2021, 2:00 p.m.
WEBEX

Members in Attendance:

Jason Mumpower, Comptroller of the Treasury; Christi W. Branscom, Commissioner, Department of General Services; Mike Perry, Chief Procurement Office

Others in Attendance:

Bryan Chriske, Tony Bybee, DeRenne Raley, Jennifer Pfeiffer, Davis Nwankwo, Paul Krivacka

WebEx Attendance:

Shannon Mohundro, Randy Dean, Buddy Lea, Christy Allen, Chadwick Nottingham, John Bissell, Josh Ferguson, Jessica Starling, Laura Hartsfield

I. Call to Order:

Commissioner Branscom called the meeting to order and recognized that a quorum of Procurement Commission ("Commission") members was present. Butch Eley, Commissioner, Department of Finance and Administration, was not in attendance due to a special session scheduled at the same time.

II. Minutes from the February 18, 2021 Meeting:

Commissioner Branscom presented the April 15, 2021, minutes for approval. Comptroller Mumpower stated his office had reviewed minutes and moved adoption of April 15, 2021, Procurement Commission meeting minutes as presented. Commissioner Branscom seconded the motion. All members voted in favor – none opposed, whereupon the minutes were approved.

III. Consent Agenda Items.

Commissioner Branscom presented the Consent Agenda items (1) through (8) for approval. Mr. Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, asked for one of the consent agenda items to be withdrawn due to Finance and Administration having had additional changes to that item. Consent Agenda item (6) was removed from the agenda and will be brought back once all changes have been made. Mr. Krivacka stated that items (1) through (5) and items (7) and (8) are being present for approval today, and he was available for any questions on the Consent Agenda items.

Commissioner Branscom asked if there were any comments or questions on the consent agenda items.

Seeing no discussion, Comptroller Mumpower made a motion to approve Consent Agenda items (1) through (5) and items (7) and (8). Commissioner Branscom seconded the motion. All members voted in favor – none opposed; whereupon Consent Agenda items (1) through (5) and items (7) and (8) were approved.

IV. New Business:

Mr. Krivacka presented the following New Business agenda items:

Mr. Krivacka noted that there were (3) New Business items.

Mr. Krivacka proceeded to present agenda item (1):

(1) Statewide Payment Card Policy and Procedures 2015-010

Mr. Krivacka summarized the following points regarding the Statewide Payment Card Policy and Procedures 2015-010 proposal:

- This request removes the section paragraph at the bottom of section 5.8. and advises P-Card Users to contact the Statewide P-Card Program Administration Team. Section 5.8 has caused confusion in the past and this section is not adding any additional information.
- Adds a new section #14 – Travel. This reminds procurement professionals to comply with F&A Travel Regs and that there is a virtual p-card that may be used for air travel through SWC# 747.

Seeing no discussion on agenda items (1), Comptroller Mumpower made a motion to approve the Statewide Payment Card Policy and Procedures 2015-010 as presented. The motion was seconded by Commissioner Branscom. All members voted in favor – none opposed.

Mr. Krivacka proceeded to present agenda item (2):

(2) State Agency P-Card Procedures Model

Mr. Krivacka summarized the following points regarding the State Agency P-Card Procedures Model:

- More details have been added to the instructions, and the optional agency procedures model has been updated to reflect changes made to Statewide Payment Card policy 2015-010 at the last two Procurement Commission meetings.

Seeing no discussion on item (2), Comptroller Mumpower made a motion to approve the State Agency P-Card Procedures Model as presented. The motion was seconded by Commissioner Branscom. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda items (3):

(3) RFP - References

Mr. Krivacka presented the following point regarding the RFP – References proposal:

- This proposal will move B.17. References instructions to RFP Attachment 6.4., References Questionnaire, and moved References out of section B. so that references are no longer scored by evaluation committee members;
- The instructional text now included at RFP Attachment 6.4. has been revised so that the prohibition on State employees providing references is removed; and,
- The Reference Questionnaire itself is now much shorter, with fewer questions for references and it is easier to complete.

Comptroller Mumpower asked a question concerning references to better understand how they will be used if this proposal is adopted. He asked if the evaluation committee will no longer score references, how will the references be used, and whose judgment will be applied to their use? Comptroller Mumpower also asked if the solicitation coordinator would make a judgment based on the references? Will the Central Procurement Office (CPO) or any others be involved? Mr. Krivacka replied by stating that the way references currently work is that the CPO asks vendors to send references directly to the CPO. The references are typically self-serving; you generally get very little information because of liability and disparagement tort concerns. However, you usually get general information about the contract and scope. Mr. Krivacka stated that the CPO does not want to make it where respondents do not have references at all because references do contain some valuable or useful information. Mr. Krivacka answered what the CPO would do with the information by stating that if the vendor did provide information that concerned the CPO, the information would be brought to Chief Procurement Officer Perry's attention for guidance. If the determination is made to disqualify the vendor from the procurement, the vendor would still have the right to protest that decision. Comptroller Mumpower asked if any vendor representatives from the Advisory Council Committee had any questions or concerns when this item came before the Advisory Committee. Mr. Krivacka replied that no complaints or concerns were received from the vendor representatives. Comptroller Mumpower asked that an update on this change be provided in approximately a year to see how things are going. Mr. Krivacka replied that it was a very fair request, and CPO is happy to update how the process is going and if it's improved.

Seeing no further discussion on agenda items (3), Comptroller Mumpower made a motion to RFP – References as presented. The motion was seconded by Commissioner Branscom. All members voted in favor – none opposed.

V. Reports:

Mr. Krivacka presented the following standard reports for acknowledgment and informational purposes:

- 1) Certification Related Items (CMRA)
- 2) Limitation of Liability
- 3) Memorandum of Understanding (MOU)
- 4) Remanufactured Goods

Commissioner Branscom requested to reflect that the reports were presented and accepted.

VI. Other Business:

Consent to Cancel the November 11, 2021, Procurement Commission Meeting:
Comptroller Mumpower, Commissioner Branscom gave their verbal consent to cancel the November 11, 2021, Procurement Commission meeting. The next meeting will be on December 16, 2021. A motion was made by Comptroller Mumpower and was seconded by Commissioner Branscom. All members voted in favor – none opposed.

VII. Adjournment:

Seeing no other business, a motion for adjournment was made by Comptroller Mumpower. The motion was seconded by Commissioner Branscom. All members voted in favor – none opposed, whereupon October 21, 2021, Procurement Commission meeting was adjourned.

PROCUREMENT COMMISSION AGENDA ITEMS OVERVIEW

Overview of Agenda Items for Discussion:

Consent Agenda Items:

1) Comptroller Required Review:

- Tenn. Code Ann. § 4-56-108, describing the Comptroller of the Treasury’s review and approval, was modified by Public Chapter No. 0193, by deleting section (a)(14) and by adding the following text at (a)(4):

(4) Cooperative agreement to participate, sponsor, conduct or administer as provided in § 12-3-512 with any other entity with an estimated liability in excess of five million dollars (\$5,000,000), which may be increased or decreased by action of the commission;

- The requested change mirrors these changes in policy and procedures, where applicable.

2) CPO Policy Number 2013-002 Procurement Methods, Oral Presentation:

- The proposed change clarifies that the timing of Oral presentations, that are included as part of a solicitation, should occur in accordance with the solicitation details.

3) Federal Award Identification Worksheet (“FAIW”):

- This updates the worksheet that is included in the GR and GG Templates.
- The federal government is transitioning from using the DUNS numbering system to using a Unique Entity Identifier (SAM) created in SAM.gov by April 2022. (See <https://www.gsa.gov> for more information).
- Also changes the term “Assistance Listing” to CFDA (see <https://sam.gov/content/assistance-listings>).
- Other changes, including new worksheet fields, are a response to the recent changes to the Uniform Guidance and recommendations by F&A representatives. (Please see 2 C.F.R. §200.332(a)(1)).

New Business Agenda Items:

1) Grant Contract (“GR”) and Governmental Grant (“GG”) Contract Templates – Track Changes to Current:

- In addition to updating the language in the FAIW, this makes a global request to change all references to “CFDA” to “Assistance Listing” in the GR and GG templates to be consistent with federal language.
- Revises the default number of days from 60 days to 90 days for contract section C.7 and the optional sections for Disbursement Reconciliation and Close Out. (See 2 C.F.R. 200.344(a)).
- Adds additional instructions for Prohibition on Certain Telecommunications applicability.
- Changes the applicability threshold for inclusion of the optional Federal Funding Accountability and Transparency Act (“FFATA”) to comply with recent updates (see 2 CFR Pt. 170, App. A) and replaces the DUNS number reference.

2) Grant Contract (“GR”) and Governmental Grant (“GG”) Contract Templates – New Optional Terms:

- Adds two new optional terms for section E—Special Terms and Conditions in our grant templates, from federal regulations: (1) Domestic Preference for Procurements; and, (2) Never Contract with the Enemy.

3) Request for Proposals (“RFP”) Template, Option: Electronic Submission of Proposals:

- To provide additional flexibility during the pandemic, this option waives all requirements to submit paper copy bids and references.
- Suppliers expressed challenges regarding logistics around providing paper bids and references and this option could be utilized to permit Electronic Submission of Proposals.

COMPTROLLER REQUIRED REVIEW

REQUEST: Revise the “Contract Subject Matter” regarding the Comptroller of the Treasury Required Approval or Endorsement column as follows:

Procurement Procedures Manual of the Central Procurement Office § 5.15.3.1.

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> Cooperative agreements as provided in Tenn. Code Ann. § 12-3-512 with an estimated liability in excess of five million dollars (\$5,000,000);. 	Comptroller of the Treasury

Contract Management Policy 2013-004 § 6.2:

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> Cooperative agreements as provided in § 12-3-512 with an estimated liability in excess of five million dollars (\$5,000,000); 	Comptroller of the Treasury

Delegation of Authority Policy 2013-006 § 6:

Contract Subject Matter	Required Approval or Endorsement
<ul style="list-style-type: none"> Cooperative agreements as provided in Tenn. Code Ann. § 4-56-108(a)(4); 	Comptroller of the Treasury

**PO POLICY NUMBER 2013-002
PROCUREMENT METHODS,
ORAL PRESENTATION**

REQUEST: Revise Central Procurement Office Policy Number 2013-002 Procurement Methods Policy and Procedures as follows:

8. Oral Presentation.

A solicitation may require oral presentations in a manner set forth in the solicitation. Oral presentations shall be conducted after the solicitation is released. Oral Presentations should be scheduled and evaluated by the Central Procurement Office or procuring State Agency in accordance with the solicitation.

**FEDERAL AWARD IDENTIFICATION
WORKSHEET (“FAIW”)**

REQUEST: Revise the Federal Award Identification Worksheet attachment in the Grant Contract (“GR”) and Governmental Grant (“GG”) Templates as follows:

ATTACHMENT REFERENCE

Federal Award Identification Worksheet

Subrecipient’s name (must match name associated with its Unique Entity Identifier (SAM))	
Subrecipient’s Unique Entity Identifier (SAM)	
Federal Award Identification Number (FAIN)	
Federal award date	
Subaward Period of Performance Start and End Date	
Subaward Budget Period Start and End Date	
Assistance Listing number (formerly known as the CFDA number) and Assistance Listing program title.	
Grant contract’s begin date	
Grant contract’s end date	
Amount of federal funds obligated by this grant contract	
Total amount of federal funds obligated to the subrecipient	
Total amount of the federal award to the pass-through entity (Grantor State Agency)	
Federal award project description (as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA))	
Name of federal awarding agency	
Name and contact information for the federal awarding official	
Name of pass-through entity	
Name and contact information for the pass-through entity awarding official	
Is the federal award for research and development?	
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	

**GRANT CONTRACT (“GR”) AND
GOVERNMENTAL GRANT (“GG”)
CONTRACT TEMPLATES –
TRACK CHANGES TO CURRENT**

REQUEST: Global request to change all references to “CFDA” to “Assistance Listing” and revise the Grant Contract (“GR”) and Governmental Grant (“GG”) Contract Templates as follows:

The following revisions should be made: **Changes are in red**

- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within **ninety (90)** days of the Grant Contract end date, in form and substance acceptable to the State.
- C.#. Disbursement Reconciliation and Close Out. The Grantee shall submit a grant disbursement reconciliation report within **ninety (90)** days of the Grant Contract end date and in form and substance acceptable to the State (and include, as applicable, documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations").
- C.#. Disbursement Reconciliation and Close Out. The Grantee shall submit a grant disbursement reconciliation report within **ninety (90)** days of the Grant Contract end date and in form and substance acceptable to the State (and include, as applicable, documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations").
- C.#. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within **ninety (90)** days of the Grant Contract end date and in form and substance acceptable to the State.

Federal Funding Accountability and Transparency Act

Add the following Section if the Grant Contract will be funded in whole or part by federal funds anticipated to equal or exceed \$30,000.

E.#. Federal Funding Accountability and Transparency Act (FFATA). This Grant requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Grantee provides information to the State as required. The Grantee shall comply with the following:

- a. Reporting of Total Compensation of the Grantee’s Executives.
 - (1) The Grantee shall report the names and total compensation of each of its five most highly compensated executives for the Grantee’s preceding completed fiscal year, if in the Grantee’s preceding fiscal year it received:
 - i. 80 percent or more of the Grantee’s annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and sub awards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation

information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Grantee's preceding fiscal year and includes the following (for more information see 17 § C.F.R. 229.402(c)(2)):

- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Grantee must report executive total compensation described above to the State by the end of the month during which this Grant Contract is established.
 - c. If this Grant is amended to extend the Term, the Grantee must submit an executive total compensation report to the State by the end of the month in which the amendment to this Grant becomes effective.
 - d. The Grantee will obtain a Unique Entity Identifier (SAM) and maintain its number for the term of this Grant. More information about obtaining a Unique Entity Identifier can be found at: <https://www.gsa.gov>. **Error! Hyperlink reference not valid.**

The Grantee's failure to comply with the above requirements is a material breach of this Grant for which the State may terminate this Grant Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Grantee unless and until the Grantee is in full compliance with the above requirements.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Add the following Section as appropriate. Federal law prohibits the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Use of this term is required when federal funds are involved pursuant to 2 C.F.R. Part 200, Appendix II, § K (citing 2 C.F.R. § 200.216).

**GRANT CONTRACT (“GR”) AND
GOVERNMENTAL GRANT (“GG”)
CONTRACT TEMPLATES – NEW
OPTIONAL TERMS.GRANT CONTRACT
 (“GR”) AND GOVERNMENTAL GRANT
 (“GG”) CONTRACT TEMPLATES**

REQUEST: Add the following as NEW Optional Terms to the GR and GG Templates:

Domestic Preference for Procurements.

Add the following section as appropriate or when required by federal funding source. See 2 C.F.R. Part 200, Appendix II, § L (citing [2 C.F.R. § 200.322](#)).

E.#. Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Grantee should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Never Contract with the Enemy.

The following term applies only to grants that are expected to exceed \$50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

E.#. Never Contract with the Enemy.

I. Prohibition on Providing Funds to the Enemy

A. The Grantee must—

1. Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed forces are actively engaged in hostilities, which must be completed through 2 C.F.R. 180.300 prior to issuing a subaward or contract and;
2. Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Department of State provides written approval to continue the subaward or contract.

B. The Grantee may include the substance of this clause, including paragraph (A) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

C. The State has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the State becomes aware that the Grantee failed to exercise due diligence as required by paragraph (A) of this clause or if the State becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

II. Additional Access to Grantee Records

- A. In addition to any other existing examination-of-records authority, the State is authorized to examine any records of the Grantee and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before December 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.
- B. The substance of this clause, including this paragraph (B), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

**REQUEST FOR PROPOSALS (“RFP”)
TEMPLATE, OPTION: ELECTRONIC
SUBMISSION OF PROPOSALS**

REQUEST FOR PROPOSALS (RFP) STANDARD TEMPLATE

This template prescribes the format and content for a Request for Proposals (RFP). A RFP is a competitive solicitation used to award a contract based on Respondent qualifications, experience, technical approach and cost. Documents of this type must adhere to this template with revisions only as instructions permit. A Rule Exception Request is required unless the deviation is immaterial; however, even immaterial deviations are subject to disapproval.

APPROVAL INSTRUCTIONS

Each RFP must be approved for release in accordance with the instructions below. Approval is also required for any RFP amendment or RFP cancellation. For detailed guidance on contract approvals, see the Procurement Procedures Manual of the Central Procurement Office (CPO) at § 5.15.3. All references below to requisite Comptroller's Office submission and approvals should be followed only as applicable.

Procurement professionals should complete template fields and follow, replace, or otherwise address **red** instructional text (e.g., **State Agency Name, amount, will/will not**) as indicated with appropriate font and color. The standard RFP Template begins on the following page. Additional RFP instructions, considerations, and options follow the standard RFP Template.

Procurement professionals should submit the RFP draft at least 20 business days before the desired RFP release date. (Notwithstanding compliance with this deadline, circumstances may necessitate a delay of the release date.) To prevent additional delays, any approved Rule Exception Requests, endorsements, justifications, or other required approvals must be submitted with the RFP draft. If there are any questions as to whether a Rule Exception Request is required, consult CPO staff for guidance. Each draft must:

1. be clearly marked as "REVIEW DRAFT";
2. specify a number indicating the draft version;
3. highlight all deviations from the template language; and
4. highlight any changes between draft versions that may be necessary prior to release.
 - CPO staff will: (a) review the draft and confer with procuring agency staff by means of e-mailed review notes and redrafts; and (b) e-mail the proposed document to Comptroller staff when the CPO review is completed.
 - Comptroller staff will: (a) review the draft and confer directly with CPO staff and copy procuring agency staff by means of review notes and redrafts exchanged by e-mail; and (b) e-mail approval notice to both the CPO staff and procuring agency staff when the latest draft appears acceptable for release.

PUBLICATION INSTRUCTIONS

Upon Comptroller approval, prepare the RFP for public release by removing any highlighting, changing all text to an appropriate color, and removing any draft version number or other extraneous notations. On the business day before the date approved for public solicitation, e-mail the RFP prepared for public release to the CPO contact assigned to the procuring agency and to the Comptroller so that CPO staff can post the digital document(s) on the Internet as appropriate. The documents presented for publication must consist of one or more (clearly and logically separated component) digital files in PDF and DOC format. If previously approved, the cost proposal attachment may be presented for publication in XLS, spreadsheet format.

ALWAYS confirm that each document is properly posted for public review on the CPO's website. If, for any reason, a RFP is not properly published to the Internet, it may be necessary for the State to revise the approved RFP schedule of events to add additional time before the Q&A and Respondent deadlines.



STATE OF TENNESSEE
STATE AGENCY NAME

REQUEST FOR PROPOSALS
FOR
BRIEF GOODS OR SERVICES CAPTION

RFP # NUMBER

RFP CONTENTS

SECTIONS:

1. INTRODUCTION
2. RFP SCHEDULE OF EVENTS
3. RESPONSE REQUIREMENTS
4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS
5. EVALUATION & CONTRACT AWARD

ATTACHMENTS:

- 6.1. Response Statement of Certifications & Assurances
- 6.2. Technical Response & Evaluation Guide
- 6.3. Cost Proposal & Scoring Guide
- 6.4. Reference Questionnaire
- 6.5. Score Summary Matrix
- 6.6. *Pro Forma* Contract

1. INTRODUCTION

The State of Tennessee, **STATE AGENCY NAME**, hereinafter referred to as “the State,” issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

1.1. Statement of Procurement Purpose

BRIEF, HIGH-LEVEL EXPLANATION OF GOODS OR SERVICES SOUGHT OR A SUMMARY OF THE PROBLEM TO BE ADDRESSED. INCLUDE FURTHER INFORMATION ABOUT INITIATIVE, SUMMARY BACKGROUND INFORMATION, ETC. AS NEEDED. DO NOT ASSUME THAT DETAILED SPECIFICATIONS (WHICH SHOULD BE SET OUT IN THE PRO FORMA CONTRACT SCOPE), WILL BE APPROVED FOR THIS SECTION. INCLUDE SUMMARY BACKGROUND INFORMATION ONLY AS NEEDED.

- 1.1.2. **ONLY IF APPLICABLE AND IF THE MAXIMUM LIABILITY IS NOT INCLUDED IN THE PRO FORMA CONTRACT, INCLUDE INFORMATION REGARDING THE TOTAL ESTIMATED SCOPE OR VOLUME FOR THE CURRENT CONTRACT PERIOD, AND FOR THE CONTRACT PERIOD OF THE CONTRACT AWARDED PURSUANT TO THIS RFP. (SEE TENN. CODE ANN. § 12-3-305).**

1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma Contract* details the State’s requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP 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, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4. RFP Communications

- 1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

RFP # NUMBER

1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

NAME
STATE AGENCY NAME
STREET ADDRESS
TELEPHONE NUMBER
E-MAIL ADDRESS
OTHER APPROPRIATE INFORMATION IF ANY

1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. 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 <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

NAME
STATE AGENCY NAME
STREET ADDRESS
TELEPHONE NUMBER
E-MAIL ADDRESS
OTHER APPROPRIATE INFORMATION IF ANY

1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.

1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.

1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.

1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section **REFERENCE**).

1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other

means deemed reasonable by the State. For internet posting, please refer to the following website: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo--supplier-information/request-for-proposals--rfp--opportunities1.html>.

- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

1.7. **Pre-Response Conference**

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

ADDRESS/LOCATION
OTHER APPROPRIATE INFORMATION IF ANY

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section **REFERENCE** and on the date detailed in the RFP Section 2, Schedule of Events.

1.8. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate);
- a contact person's name and title; and
- the contact person's mailing address, telephone number, facsimile number, and e-mail address.

A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.

1.9. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		DATE
2. Disability Accommodation Request Deadline	2:00 p.m.	≥ 3 BUSINESS DAYS LATER
3. Pre-response Conference	TIME	≥ 1 BUSINESS DAY LATER
4. Notice of Intent to Respond Deadline	2:00 p.m.	≥ 1 BUSINESS DAY LATER
5. Written "Questions & Comments" Deadline	2:00 p.m.	≥ 3 BUSINESS DAYS LATER
6. State Response to Written "Questions & Comments"		≥ 3 BUSINESS DAYS LATER
7. Response Deadline	2:00 p.m.	≥ 5 BUSINESS DAYS LATER
8. State Completion of Technical Response Evaluations		≥ 3 BUSINESS DAYS LATER
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	1 BUSINESS DAY LATER
10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	1 – 3 BUSINESS DAYS LATER
11. End of Open File Period		7 CALENDAR DAYS LATER
12. State sends contract to Contractor for signature		1 BUSINESS DAY LATER
13. Contractor Signature Deadline	2:00 p.m.	1 – 5 BUSINESS DAYS LATER

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section **REFERENCE**).

3. RESPONSE REQUIREMENTS

3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.

- 3.1.1.1. A Respondent should duplicate and use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
 - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP, as may be amended.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.
 - 3.2.2.1. One (1) original Technical Response paper document labeled:

“RFP # NUMBER TECHNICAL RESPONSE ORIGINAL”

and **WRITTEN NUMBER (NUMBER) digital** copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, **standard CD-R recordable disc or USB flash drive** labeled:

“RFP # NUMBER TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.
 - 3.2.2.2. One (1) original Cost Proposal paper document labeled:

“RFP # NUMBER COST PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “PDF/XLS” format properly recorded on separate, blank, **standard CD-R recordable disc or USB flash drive** labeled:

“RFP # NUMBER COST PROPOSAL COPY”

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.
- 3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:
 - 3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

“DO NOT OPEN... RFP # NUMBER TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”
 - 3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN... RFP # NUMBER COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP # NUMBER SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

SOLICITATION COORDINATOR NAME
STATE AGENCY NAME
STREET ADDRESS
OTHER APPROPRIATE INFORMATION IF ANY

3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

3.3.8. 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 RFP:

3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.3.8.2. 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

3.3.8.3. 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.

3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.

3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section REFERENCE). A response must address the final RFP (including its attachments) as amended.

4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.6. **Insurance**

The State will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. 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 RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful 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.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful 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 solicitation. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following:
<https://tntap.tn.gov/eservices/#1>

4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the Contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.
- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma Contract*, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

4.11. **Contract Amendment**

After Contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this RFP, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	NUMBER
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	NUMBER
Cost Proposal (refer to RFP Attachment 6.3.)	NUMBER ≥ 30% OF TOTAL POINTS

5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. (“Responsive Respondent” is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. “Responsible Respondent” is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A— Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team’s determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP,

and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

5.3. **Contract Award Process**

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.

- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

RFP # NUMBER STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

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

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of the RFP Attachment 6.6., *Pro Forma* Contract for the total Contract Term.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the Contract.
5. The Respondent will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT

SIGNATURE:

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

RFP ATTACHMENT 6.2. — Section A

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i>).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).	
	A.1.	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	INSERT APPROPRIATE MANDATORY REQUIREMENT OPTIONS AS NEEDED. (FOLLOWING A.2., YOU MUST INCLUDE AT LEAST ONE OPTION TO DETERMINE FINANCIAL RESPONSIBILITY).	
	A.#.	IF NEEDED, INSERT ADDITIONAL MANDATORY REQUIREMENT OPTIONS. IF MORE THAN ONE ADDITIONAL OPTION IS NEEDED, CREATE A NEW, ADDITIONAL ROW BELOW AND ADD THE OPTION LANGUAGE.	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

RFP ATTACHMENT 6.2. — SECTION B

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	B.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	B.8.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.9.	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.10.	Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFP.

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.
	B.14.	Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: <ul style="list-style-type: none"> (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u> (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: <ul style="list-style-type: none"> (a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please include the following information: <ul style="list-style-type: none"> (i) contract description; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran-owned or persons with disabilities); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: <ul style="list-style-type: none"> (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.

RFP ATTACHMENT 6.2. — SECTION B (continued)

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p>
	B.17.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <p>(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>
	B.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES AS NECESSARY
		<p>SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = RFP § 5.1. NUMBER)</p>
State Use – Evaluator Identification:		

RFP ATTACHMENT 6.2. — SECTION C

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		NUMBER	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State's project schedule.		NUMBER	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule.		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
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	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	

RFP ATTACHMENT 6.2. — SECTION C (continued)

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
	C.#.	REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES & WEIGHTS AS NECESSARY		NUMBER	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>					Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>
Total Raw Weighted Score <hr/> Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i>			X RFP § 5.1. NUMBER <i>(maximum possible score)</i>	= SCORE:	
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

RFP ATTACHMENT 6.3.

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

ADDITIONAL REQUIREMENTS FOR COMPLETING PROPOSED COST (I.E., MINIMUM AMOUNT, "BLANK" CELLS, ETC.)

NOTICE: The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:			
PRINTED NAME & TITLE:			
DATE:			
RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
DESCRIPTION	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	

RFP ATTACHMENT 6.3. (continued)

RESPONDENT LEGAL ENTITY NAME:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	NUMBER	
<p align="center">EVALUATION COST AMOUNT (sum of evaluation costs above):</p> <p>The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.</p>			
<p>lowest evaluation cost amount from <u>all</u> proposals</p> <hr/> <p>evaluation cost amount being evaluated</p>			<p>x RFP § 5.1. NUMBER (maximum section score)</p> <p>= SCORE:</p>
<p><i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i></p>			

REFERENCE QUESTIONNAIRE

The standard reference questionnaire provided on the following pages of this attachment should be completed by all individuals offering a reference for the Respondent.

The Respondent will be solely responsible for obtaining completed reference questionnaires as detailed below.. Provide references from individuals who are not current State employees of the procuring State Agency for projects similar to the goods or services sought under this RFP and which represent:

- two (2) contracts Respondent currently services that are similar in size and scope to the services required by this RFP; and
- three (3) completed contracts that are similar in size and scope to the services required by this RFP.

References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The individual contact reference provided for each contract or project shall not be a current State employee of the procuring State agency. Procuring State agencies that accept references from another State agency shall document, in writing, a plan to ensure that no contact is made between the procuring State agency and a referring State agency. The standard reference questionnaire, should be used and completed, and is provided on the next page of this RFP Attachment 6.4.

In order to obtain and submit the completed reference questionnaires following one of the two processes below.

Written:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) Send a reference questionnaire and new, standard #10 envelope to each reference.
- (c) Instruct the reference to:
 - (i) complete the reference questionnaire;
 - (ii) sign and date the completed reference questionnaire;
 - (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;
 - (iv) sign his or her name in ink across the sealed portion of the envelope; and
 - (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).
- (d) Do NOT open the sealed references upon receipt.
- (e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.

Email:

- (a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.
- (b) E-mail a reference questionnaire to each reference.
- (c) Instruct the reference to:
 - (i) complete the reference questionnaire;
 - (ii) sign and date the completed reference questionnaire;
 - (iii) E-mail the reference directly to the Solicitation Coordinator by the RFP Technical Response Deadline with the Subject line of the e-mail as "[Respondent's Name] Reference for RFP # **NUMBER**".

NOTES:

- The State will not accept late references or references submitted by any means other than the two which are described above, and each reference questionnaire submitted must be completed as required.
- The State will not review more than the number of required references indicated above.

- While the State will base its reference check on the contents of the reference e-mails or sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.
- The State is under no obligation to clarify any reference information.

RFP # NUMBER REFERENCE QUESTIONNAIRE**REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire and follow either process outlined below;

Physical:

- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

E-Mail:

- e-mail the completed questionnaire to:
Solicitation Coordinator Name and E-Mail Address

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) **What goods or services does/did the reference subject provide to your company or organization?**

(4) **If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**

RFP ATTACHMENT 6.5.

SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: § 5.1. NUMBER)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: NUMBER)						
<i>Solicitation Coordinator Signature, Printed Name & Date:</i>						

RFP # NUMBER PRO FORMA CONTRACT

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**PRO FORMA CONTRACT
DRAFTED IN COMPLIANCE WITH CURRENT APPLICABLE MODEL**

RFP INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional RFP Instructions, Considerations, and Options. Replace or modify the Standard RFP Template by including the following content as appropriate. Content included as a paragraph with a line before it is intended to provide additional instructional guidance. Content included with a box around it is intended to be inserted into the standard RFP Template.

1.1. **Statement of Purpose**

This section should be used to highlight the purpose of the procurement and not to detail specific contract requirements. Such requirements should be enumerated in RFP Attachment 6.6., *Pro Forma* Contract, Scope of Services. All procurement specifications and scopes of work should be worded to permit free and open competition to the maximum extent reasonably practicable under the circumstances.

1.3. **Nondiscrimination**

Option: Exception for religious organizations.

Replace the standard Nondiscrimination language with the following for religious organizations.

1.3. **Nondiscrimination**

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the basis of any classification protected by Federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4.1. **RFP Communications**

Assign a RFP number consisting of:

- the 5-digit, procuring agency business unit code
- a unique, 5-digit, agency-assigned number such that each RFP number will be different

Example: **RFP # 31707-12345**

1.4.9. **Factual Data**

Option: Additional Data Disclaimer.

Add the following as a second paragraph of this section as appropriate:

All statistical or fiscal data or information provided by the State in conjunction with this RFP, whether by way of exhibits, amendments or modifications to this RFP, are provided by the State "as is." The State expressly disclaims any warranty as to the accuracy or the adequacy of any statistical or fiscal data that it provides to Respondents. A Respondent's reliance upon the accuracy or adequacy of such data shall not be the basis of relief from contract performance or recovery of actual, consequential or punitive damages from the State.

1.7. **Pre-response Conference**

Option: No Pre-response Conference.

Delete the section (and re-number subsequent sections accordingly) as appropriate.

Option: MANDATORY Pre-response Conference.

The use of mandatory Pre-response Conferences can limit competition and therefore should only be used under exceptional circumstances, and requires an approved Rule Exception Request. In the event a mandatory Pre-response Conference is needed, the first paragraph of this section should be revised as follows:

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is **MANDATORY**. A representative for the Respondent MUST identify themselves either telephonically or via a sign-in sheet if the Respondent attends in person.

Also, if the Pre-response Conference is mandatory add the following row to the RFP Attachment 6.2., Section A table:

	A.#.	Respondent’s representative attended the mandatory Pre-response Conference.	
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Option: Performance Bond Requirement.

Procurement professionals should consider the advantages and disadvantages of requiring performance bonds because these bonds may not be appropriate for all types of procurements. Procurement professionals should include performance bond requirements if necessary to mitigate risk when procuring equipment, technology, or services. Performance bonds are a three-party agreement between a surety company, a contractor, and the State. The bond provides a guarantee that the contractor will comply with the terms and conditions of the contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor’s responsibilities and ensures that the project is completed. Although performance bonds may be beneficial for risky projects (e.g., projects requiring extensive software customization, system integration, etc.), these bonds can limit competition by excluding smaller firms (e.g., minority, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities or small businesses). Smaller firms often have to pay substantially more to get a surety company to underwrite the bond. In deciding whether to require performance bonds, procurement professionals should balance the need to mitigate performance risk against adverse effects of bond requirements on small businesses, competition or the prices the State will pay for goods and services, as well as any other considerations.

If a Performance Bond requirement is proposed:

- determine the performance bond amount by balancing the need to mitigate the risks involved in the given procurement and any adverse effects of bonding on small businesses, competition, or pricing;
- prepare a bond in form and substance acceptable to the CPO and attach it to the RFP, Attachment 6.6., *Pro Forma Contract*, as a properly referenced attachment;
- provide documentation of legal counsel determination to the CPO indicating that the proposed Performance Bond form is enforceable by the state;
- provide written justification to the CPO that the bond requirement is warranted due to the unique circumstances of the procurement; AND
- add the model Performance Bond section below following the Notice of Intent to Respond section of the RFP (and re-number subsequent section(s) appropriately.

1.#. Performance Bond

The State shall require a performance bond upon approval of a contract pursuant to this RFP. The amount of the performance bond shall be a sum equal to **WRITTEN DOLLAR AMOUNT (\$NUMBER)**, and said amount shall not be reduced at any time during the period of the contract.

The successful Respondent must obtain the required performance bond in form and substance acceptable to the State (refer to RFP Attachment 6.6., *Pro Forma Contract*, Attachment **REFERENCE**, Model Performance Bond) and provide it to the State no later than the performance bond deadline detailed in the RFP Section 2, Schedule of Events.

After contract award, the successful Respondent must meet this performance bond requirement by providing the State either:

- a. a performance bond that covers the entire Contract period including all options to extend the Contract, or
- b. a performance bond for the first, twelve (12) calendar months of the Contract in the amount detailed above, and, thereafter, a new or re-issued performance bond in the amount detailed above covering each subsequent twelve (12) calendar month period of the Contract. (In which case, the Contractor must provide the new (or re-issued) performance bonds to the State no later than thirty (30) days preceding each subsequent period of the Contract to be covered by the new (or re-issued) bond.)

The successful Respondent must make all necessary arrangements for the performance bond prior to the Contract start date and prior to any subsequent performance bond deadlines in the case of an annual performance bond. The Respondent is responsible for securing the services of any fidelity or guaranty underwriter.

The performance bond requirement set forth above is a material condition for the award of a contract or any renewal or extension of any contract that is awarded. The Respondent's/Contractor's failure to provide to the State a performance bond as required by RFP Section 2, Schedule of Events, shall entitle the State to exercise any and all rights it has in law or in equity. During the term of the Contract, the Respondent's/Contractor's failure to periodically provide to the State a new or re-issued performance bond, no later than thirty (30) days preceding each period of the Contract to be covered by the new or re-issued performance bond, shall entitle the State to exercise any and all rights it has in law or in equity.

2. RFP SCHEDULE OF EVENTS

2.1. RFP Schedule of Events (table)

The Request for Proposals process from issuance of the RFP to contract award will be in most cases at least thirty (30) business days.

Revise the "time zone" as appropriate.

The standard RFP Schedule of Events is copied below for easy reference:

EVENT	TIME (central time zone)	DATE
1. RFP Issued		
2. Disability Accommodation Request Deadline	2:00 p.m.	
3. Pre-response Conference	TIME	
4. Notice of Intent to Respond Deadline	2:00 p.m.	
5. Written "Questions & Comments" Deadline	2:00 p.m.	
6. State Response to Written "Questions & Comments"		
7. Response Deadline	2:00 p.m.	
8. State Completion of Technical Response Evaluations		
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	

10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	
11. End of Open File Period		7 CALENDAR DAYS LATER
12. State sends contract to Contractor for signature		
13. Contractor Contract Signature Deadline	2:00 p.m.	

Option: NO Pre-response Conference Event.

Delete the Pre-response Conference Event 3 from the schedule and re-number subsequent events as appropriate.

Option: Oral Presentation or Field Test Event.

Complete and insert the following rows, in order and immediately after the Response Deadline event. Re-number subsequent events as appropriate.

#. State Schedules Respondent Oral Presentation or Field Test		
#. Respondent Oral Presentation or Field Test	8 a.m. - 4:30 p.m.	

Option: Negotiations.

For CPO USE ONLY. Add the following after the Cost Proposal Deadline event, if applicable.

#. Negotiations (Optional)	4:30 p.m.	
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Option: Performance Bond Deadline.

Complete and insert the following row immediately after the Contractor Contract Signature Deadline event as appropriate.

#. Performance Bond Deadline	4:30 p.m.	
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3. RESPONSE REQUIREMENTS**3.1. Response Form****Option: Technical Response Page Limitation**

Replace section 3.1.1.2. with the following (revise specific documents that will be exempted from page limitation count as appropriate):

A Technical Response should be economically prepared, with emphasis on completeness and clarity, and should NOT exceed ___ pages in length (maps, graphs, charts, as noted and included as an appendix will not count against this page limit). A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and all text must be at least a 12 point font. All response pages must be numbered.

Option: Digital Submittal of Responses.

Delete section 3.1.2.4. and replace with the following if Responses should be submitted as digital documents.

3.1.2.4. A Respondent must submit the Cost Proposal to the State on a separate e-mail, CD, or USB flash drive from the Technical Response (as detailed in RFP Sections 3.2.3., *et. seq.*).

Option: Digital (instead of Paper) Submittal of Responses.

Delete and replace section 3.2. with the following if following if Responses should be submitted as digital documents. Please note that all electronic records must be maintained in accordance with the Secretary of State's Record Management Division's and the Department of Finance & Administration's Strategic Technology Solution's policies.

3.2. Response Delivery

3.2.1. A Respondent must ensure that both the Technical Response and Cost Proposal files meet all form and content requirements, including all required signatures, as detailed within this RFP.

3.2.2. A Respondent must submit their response as specified in one of the two formats below.

3.2.2.1. Digital Media Submission

3.2.2.1.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive and should be clearly identified as the:

"RFP #NUMBER TECHNICAL RESPONSE ORIGINAL"

and **WRITTEN NUMBER (NUMBER)** digital copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

"RFP # NUMBER TECHNICAL RESPONSE COPY"

The customer references should be delivered by each reference in accordance with RFP Attachment 6.4. Reference Questionnaire.

3.2.2.1.2. Cost Proposal:

The Cost Proposal should be in the form of one (1) digital document in "PDF" or "XLS" format properly recorded on a separate, otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

"RFP #NUMBER COST PROPOSAL"

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

3.2.2.2. E-mail Submission

3.2.2.2.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should be clearly identified as follows:

"RFP #NUMBER TECHNICAL RESPONSE"

The customer references should be delivered by each reference in accordance with RFP Attachment 6.4. Reference Questionnaire.

3.2.2.2. Cost Proposal:

The Cost Proposal should be in the form of one (1) digital document in “PDF” or “XLS” format or other easily accessible digital format attached to an e-mail to the Solicitation Coordinator. Both the subject and file name should be clearly identified as follows:

“RFP #NUMBER COST PROPOSAL”

An electronic or facsimile signature, as applicable, on the Cost Proposal is acceptable.

3.2.3. For e-mail submissions, the Technical Response and Cost Proposal documents must be dispatched to the Solicitation Coordinator in **separate** e-mail messages. For digital media submissions, a Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

3.2.3.1. The Technical Response and copies must be placed in a sealed package that is clearly labeled:

“DO NOT OPEN... RFP # NUMBER TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”

3.2.3.2. The Cost Proposal must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN... RFP # NUMBER COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP # NUMBER SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

3.2.3.4. Any Respondent wishing to submit a Response in a format other than digital may do so by contacting the Solicitation Coordinator.

3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

**SOLICITATION COORDINATOR NAME
STATE AGENCY NAME
STREET ADDRESS
OTHER APPROPRIATE INFORMATION IF ANY**

3.2. **Response Delivery**

Request respondents to provide to the State a sufficient number of Technical Response copy discs or USB flash drives to allow one copy for each Proposal Evaluation Team member.

Option: Additional Delivery Instructions.

Revise required response format and subsections, if necessary, to provide for additional instructions for labeling and submitting the Technical Response and Cost Proposal.

3.3. **Response and Respondent Prohibitions**

Option: No Extraneous Terms and Conditions in Response

If the RFP involves information technology goods or services, insert the following as 3.3.2. and renumber the subsequent subsections **only after** consulting with the Central Procurement Office’s Legal Team and obtaining the Central Procurement Office’s approval.

A Respondent shall not include in its response, or after contract award, any end-user license agreement, manufacturer’s terms and conditions, service guide, clickwrap agreement, shrinkwrap agreement, online terms and conditions, or other terms and conditions that supplement, modify, or contradict the terms set forth in the *pro forma* contract.

4. **GENERAL CONTRACTING INFORMATION & REQUIREMENTS**

4.8. **Disclosure of Response Contents**

Option: Additional Disclosure Information.

Add the following to the end of sub-section 4.8.3., if it is requested by the procuring agency and approved by the Attorney General’s Office. The Attorney General’s Office’s approval shall be submitted with the RFP review request.

The State agrees to protect, to the fullest extent permitted by state law, the confidentiality of information expressly identified by the Respondent as confidential and proprietary, including information that would allow a person to obtain unauthorized access to confidential information or to electronic information processing systems owned by or licensed to the State.

4.9. **Contract Approval and Contract Payments**

Option: Awarded Respondent shall accept the State’s Purchasing Card as a form of payment

Add the following to the end of subsection 4.9.3. only after performing market research and determining that requiring vendors to accept payments via purchasing card and providing level III data reporting is generally accepted in the marketplace.

The Respondent awarded the Contract resulting from this RFP shall accept the State’s Purchasing Card (“P-Card”) as a form of payment at no cost to the State and provide level III data reporting information.

5. **EVALUATION & CONTRACT AWARD**

5.1. **Evaluation Categories & Maximum Points**

The total, maximum possible points should be expressed as a numerical score, e.g., “100” (or “1,000”), so that the relative percentage of importance or emphasis of each category is readily apparent. The weight of each category should correspond to the importance to the State of each criterion. The evaluation points assigned to the Cost Proposal may NOT be less than 30% of the total points.

Option: Oral Presentation or Field Test Points – Example 1.

Replace the RFP Section 5.1. table with the following if an Oral Presentation or Field Test requirement is proposed. Only include this section if the Oral Presentation or Field Test will be evaluated as a separate evaluation category.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
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General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	NUMBER
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	NUMBER
Oral Presentation or Field Test (refer to RFP Attachment 6.2., Section D)	NUMBER ≤ 10% OF TOTAL POINTS
Cost Proposal (refer to RFP Attachment 6.3.)	NUMBER ≥ 30% OF TOTAL POINTS

5.2. Evaluation Process

Option: Multiple Contract Awards

If the State intends to use this RFP to award multiple contracts (e.g. by region) the Evaluation Process must clearly detail how the responses will be evaluated.

Option: Oral Presentation or Field Test Points – Example 1.

The procuring state agency must maintain an accurate record of each Respondent's oral presentation or Field Test session such that all pertinent dialogue between Proposal Evaluation Team members, technical advisers, and Respondents shall be reduced to writing or otherwise memorialized. Procurement Professionals should consider using a court reporter, video recording, or audio recording to memorialize the oral presentation or Field Test.

Insert the following as sections 5.2.1.5., *et seq.* (and renumber current section 5.2.1.5. accordingly) if an Oral Presentation or Field Test is required.

5.2.1.5. The Solicitation Coordinator will invite each apparently responsive and responsible Respondent to make a(n) **Oral Presentation or Field Test**.

5.2.1.5.1. The **Oral Presentations or Field Tests** are mandatory. The Solicitation Coordinator will schedule Respondent **Presentations or Field Tests** during the period indicated by the RFP Section 2, Schedule of Events. The Solicitation Coordinator will make every effort to accommodate each Respondent's schedules. When the Respondent **Presentation or Tests** schedule has been determined, the Solicitation Coordinator will contact Respondents with the relevant information as indicated by RFP Section 2, Schedule of Events.

5.2.1.5.2. Respondent **Presentations or Tests** are only open to the invited Respondent, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants who are selected by the State to provide assistance to the Proposal Evaluation Team.

5.2.1.5.3. **Oral Presentations or Field Tests** provide an opportunity for Respondents to explain and clarify their responses and for the State to test to better understand the practical application of the good or service as applicable. Respondents must not materially alter their responses and **Presentations or Field Tests** will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Response & Evaluation Guide. Respondent pricing shall not be discussed or provided during **Oral Presentations or Field Tests**.

5.2.1.5.4. The State will maintain an accurate record of each Respondent's **Oral Presentation or Field Test** session. The record of the Respondent's **Oral Presentation or Field Test** shall be available for review when the State opens the procurement files for public inspection.

- 5.2.1.5.5. Proposal Evaluation Team members will independently evaluate each **Oral Presentation or Field Test** in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide, Section D.
- 5.2.1.5.6. The Solicitation Coordinator will calculate and document the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, Section D, and record that number as the score for Respondent's Technical Response section.

Option: Oral Presentation or Field Test Threshold Requirement.

A threshold requirement should not be arbitrary and may require legal counsel recommendation.

The optional language for RFP section 5.2.1.5. (above) may be revised to establish a minimum standard or threshold requirement that must be met before an invitation to make an **Oral Presentation or Field Test** is extended by the State. The minimum standard or threshold requirement must be detailed in the RFP. See possible examples below:

Option: Ranking

The Solicitation Coordinator will invite the top **NUMBER (#)** ranked Respondents to make an **Oral Presentation or Field Test**. The ranking will be determined after the Technical Response score is totaled and ranked (e.g., 1 – the best evaluated ranking, etc.).

Option: Percentile

The Solicitation Coordinator will invite Respondents whose Technical Response scores have attained a combined score of **NUMBER (#)**. This minimum score threshold represents a score of **NUMBER (#)%** of the maximum possible Technical Response score.

Option: Minimum Score

The Solicitation Coordinator will invite Respondents to make an **Oral Presentation or Field Test** who have attained a minimum score of **NUMBER (#)**.

Option: Oral Presentation or Field Test No Points – Example 2.

The procuring state agency must maintain an accurate record of each Respondent's Oral Presentation or Field Test session such that all pertinent dialogue between Proposal Evaluation Team members, technical advisers, and Respondents shall be reduced to writing or otherwise memorialized. Procurement Professionals should consider using a court reporter, video recording, or audio recording to memorialize the Oral Presentation or Field Test.

Insert the following optional language as sections 5.2.1.5., *et seq.* (and renumber current section 5.2.1.5. accordingly) if an Oral Presentation or Field Test is proposed.

- 5.2.1.5. The Solicitation Coordinator will invite each Respondent, who is apparently responsive and responsible, to make an **Oral Presentation or Field Test**.
- 5.2.1.5.1. The **Oral Presentations or Field Tests** are mandatory. The Solicitation Coordinator will schedule Respondent **Presentation or Field Test** during the period indicated by the RFP Section 2, Schedule of Events. The Solicitation Coordinator will make every effort to accommodate each Respondent's schedules. When the Respondent **Presentations or Field Tests** schedule has been determined, the Solicitation Coordinator will contact Respondents with the relevant information as indicated by RFP Section 2, Schedule of Events.

- 5.2.1.5.2. Respondent **Presentations or Field Tests** are only open to the invited Respondent, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants who are selected by the State to provide assistance to the Proposal Evaluation Team.
- 5.2.1.5.3. **Oral Presentations or Field Tests** provide an opportunity for Respondents to explain and clarify their responses and for the State to test to better understand the practical application of the good or service as applicable. Respondents must not materially alter their responses and **Presentations or Field Tests** will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Response & Evaluation Guide. Respondent pricing shall not be discussed during **Oral Presentations or Field Tests**. Evaluators may adjust Respondents' Technical Response scores based on **Oral Presentations or Field Tests**.
- 5.2.1.5.4. The State will maintain an accurate record of each Respondent's **Oral Presentations or Field Tests** session. The record of the Respondent's **Oral Presentations or Field Tests** shall be available for review when the State opens the procurement files for public inspection.

Option: Clarifications and Negotiations.

For CPO USE ONLY. Note: Negotiations (pricing or terms and conditions negotiations) shall not be utilized by a state agency unless such procurement is performed by the Central Procurement Office. (See Tenn. Code Ann. § 4-56-108(a)(8).

Add the following section as 5.2.3. and renumber subsequent sections accordingly.

- 5.2.3. **Clarifications and Negotiations:** The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. 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 supports fairness in response improvement.
- 5.2.3.1. **Clarifications:** The State 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 issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.
- 5.2.3.2. **Negotiations:** The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
- 5.2.3.3. **Cost Negotiations:** All Respondents, selected for negotiation by the State, 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 goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During

target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.

- 5.2.3.4. If the State determines that it is unable to successfully negotiate terms and conditions of a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into terms and conditions contract negotiations with the next apparent best evaluated Respondent.

Option: Multiple Contract Awards Possible

Revise the following subsections to describe how contracts will be awarded if more than one award is contemplated. This should also be mentioned in RFP section 1.1., “Statement of Procurement Purpose.”

5.3. Contract Award Process

- 5.3.1. The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to the contract awards.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Responses. To effect a contract award to a Respondent other than the ones receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated responses and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondents or any other Respondent.

- 5.3.4. The Respondents identified as offering the apparent best-evaluated responses must sign a contract drawn by the State pursuant to this RFP. The contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondents must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiations prior to contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State’s best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated responses.

6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION A

Proof of Financial Ability to Perform

One or more of the following optional provisions for a respondent to show its financial ability to perform must be added to RFP Attachment 6.2., Section A table if appropriate. Solicitation coordinators should consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or

services being procured. In the interests of flexibility, one or more of the following optional provisions must be utilized.

Option: Bank Reference

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a bank reference as evidence of Respondent's financial responsibility.

	A.#.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
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Option: Credit References

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of vendor credit references as evidence of Respondent's financial responsibility.

	A.#.	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
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Option: Credit Bureau Report

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit bureau report as evidence of Respondent's financial responsibility.

	A.#.	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	
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Option: Credit Rating

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit rating as evidence of Respondent's financial responsibility.

	A.#.	Provide a current credit rating from Moody's, Standard & Poor's, A.M. Best or Fitch Ratings, verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent.	
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Option: Credit Rating – Credit Bureau Report Option.

Some companies may not have an official credit rating from one of the four major credit rating services. Therefore, requiring credit ratings (as detailed above) without an alternative to the requirement could conceptually prevent certain companies from responding to the RFP.

The procuring agency should consider the possible impact of the requirement on competition versus the State's need to reasonably determine the financial responsibility of respondents and decide whether it is appropriate to include an alternative to the requirement.

Insert the following paragraph in the optional credit rating requirement text (above) if appropriate.

OR, in lieu of the aforementioned credit rating, provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.)

Option: Certificate of Insurance.

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) **ONLY IF** a Certificate of Insurance is considered necessary evidence of contractor financial responsibility. (Specifying insurance requirements in the *pro forma* contract does not necessitate adding this optional response requirement.)

Add, delete, or revise subsections detailing insurance coverage requirements as appropriate. (If this response requirement item is added to the RFP, the appropriate Insurance provision must be detailed in the *pro forma* contract. The insurance coverage requirements specified in both the RFP and the *pro forma* contract must be the same.)

	<p>A.#. Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following:</p> <p>(a) Name of the Insurance Company</p> <p>(b) Respondent's Name and Address as the Insured</p> <p>(c) Policy Number</p> <p>(d) The following minimum insurance coverages:</p> <p>(i) Workers' Compensation/ Employers' Liability with a limit not less than the relevant statutory amount or WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence for employers' liability;</p> <p>(ii) Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence and WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) aggregate;</p> <p>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence; and</p> <p>(iv) Professional Malpractice Liability with a limit of not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per claim.</p> <p>(e) The following information applicable to each type of insurance coverage:</p> <p>(i) Coverage Description,</p> <p>(ii) Exceptions and Exclusions,</p> <p>(iii) Policy Effective Date,</p> <p>(iv) Policy Expiration Date, and</p> <p>(v) Limit(s) of Liability.</p>	
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Option: Audited Financial Statements.

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) **ONLY IF** the anticipated contract amount is \geq \$1,000,000.00 AND extraordinary effort to assure contractor financial responsibility is appropriate.

	<p>A.#. Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements <u>must</u>:</p> <p>(1) reflect an audit period for a fiscal year ended within the last 36 months;</p> <p>(2) be prepared with all monetary amounts detailed in United States currency;</p> <p>(3) be prepared under United States Generally Accepted Accounting Principles (US GAAP);</p> <p>(4) include the auditor's opinion letter; financial statements; and the notes to the financial statements; and</p>	
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	<p>(5) be deemed, in the sole discretion of the State to reflect sufficient financial stability to undertake the subject contract with the State if awarded pursuant to this RFP.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will <u>not</u> be accepted. ▪ All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof that the person or entity who renders an opinion regarding the Respondent's financial status is licensed, including the license number and state in which the person or entity is licensed. 	
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Option: Audited Financial Statements – Line of Credit Option.

Privately held entities may not respond to a RFP if there is a risk that their audited financial statements will be available for public review. Therefore, requiring audited financial statements (as detailed above) without an alternative to this requirement could limit competition or involvement by privately held entities.

The procuring agency should weigh the impact of the financial statement requirement on competition versus the state's need to reasonably determine the financial stability/responsibility of Respondents and whether a suitable alternative to a financial statement is available.

Insert the following paragraph before the "NOTES" in the optional audited financial statements requirement text (above) if appropriate.

OR, in lieu of the aforementioned independent audited financial statements, provide a financial institution's letter of commitment for a general Line of Credit in the amount of **WRITTEN AMOUNT ≥ ONE MILLION DOLLARS (\$NUMBER AMOUNT)**, U.S. currency, available to the Respondent. Said letter must specify the Respondent's name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least **PERIOD ≥ 6 MONTHS**.

Contingent Requirement: Performance Bond Confirmation.

Add the following row to the RFP Attachment 6.2., Section A table ONLY IF a Performance Bond is proposed.

	A.#.	Provide a statement confirming that, if awarded a contract pursuant to this RFP, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFP. The statement must be signed by an individual with legal authority to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it.	
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Option: Additional Mandatory Requirements.

Typically, each mandatory requirement item must be drafted such that it is capable of being objectively determined on a "yes/no" basis. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Qualitative evaluation should not be required to determine whether the response was reasonable and adequate to satisfy each mandatory requirement.

Procuring agency staff may be asked to provide evidence that a proposed mandatory requirement is rationally related to the procurement goals.

To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.

Add mandatory requirement items to the RFP Attachment 6.2., Section A table (after the template items) as appropriate.

6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION B

General Qualifications & Experience

The entire set of General Qualification & Experience items detailed in the template for this section MUST be evaluated together as indicated.

RFP Attachment 6.2., Section B and the methodology for evaluating responses may NOT be revised except to add new evaluation items.

6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION C

Technical Qualifications, Experience & Approach

The total, maximum possible points should be expressed as a numerical score, e.g., “100” (or “1,000”), so that the relative percentage of importance or emphasis of each category is readily apparent. The weight of each category should correspond to the importance to the State of each criterion.

Do NOT assume automatic approval of proposed Evaluation Factors. Procuring agency staff may be required to justify and explain in detail the basis for each proposed Evaluation Factor.

Assign Evaluation Factors such that the Point Scale Score for each item will be weighted to reflect the relative importance of the item to the other evaluation items within the section.

If all evaluation items in the section are to be considered (weighted) equally, specify “1” as the Evaluation Factor for each item.

Option: C.1. Delete or revise this requirement as appropriate.

Option: C.2. Delete or revise this requirement as appropriate.

Option: C.3. Delete or revise this requirement as appropriate.

Option: Additional Technical Qualifications, Experience & Approach Items. Add evaluation items to the RFP Attachment 6.2., Section C table so that the state has the best possible information upon which to make a contractor selection.

Option: 6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION D

The total, maximum possible points should be expressed as a numerical score, e.g., “100” (or “1,000”), so that the relative percentage of importance or emphasis of each category is readily apparent. The weight of each category should correspond to the importance to the State of each criterion.

Do NOT assume automatic approval of proposed Evaluation Factors. Procuring agency staff may be required to justify and explain in detail the basis for each proposed Evaluation Factor.

Add RFP Attachment 6.2., Section D (next page) if oral presentation or field test points are proposed.

Assign Evaluation Factors such that the Point Scale Score for each item will be weighted to reflect the relative importance of the item to the other evaluation items within the section. If all evaluation items in the section are to be considered (weighted) equally, specify “1” as the Evaluation Factor for every item.

RFP ATTACHMENT 6.2.— SECTION D

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION D: ORAL PRESENTATION OR FIELD TEST. The Respondent must address ALL Oral Presentation or Field Test Items (below).

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the oral presentation or field test response to each item. Each evaluator will use the following whole-number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item’s raw, weighted score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:			
Oral Presentation or Field Test Items	Item Score	Evaluation Factor	Raw Weighted Score
D.1. ORAL PRESENTATION OR FIELD TEST TOPIC OR QUESTION TO BE ADDRESSED		NUMBER	
D.2. REPEAT REQUIREMENT ITEMS & ASSOCIATED ITEM REFERENCES AND WEIGHTS AS NECESSARY		NUMBER	
Total Raw Weighted Score <i>(sum of Raw Weighted Scores above):</i> The Solicitation Coordinator will use this sum and the formula below to calculate the score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.			
$\frac{\text{total raw weighted score}}{\text{maximum possible raw weighted score}}$ <i>(i.e., 5 x the sum of item weights above)</i>		X RFP § 5.1. NUMBER <i>(maximum section score)</i>	= SCORE:
<i>State Use – Evaluator Identification:</i>			
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

6.3. COST PROPOSAL & SCORING GUIDE ATTACHMENT

Each cost item must clearly specify the associated, applicable compensable units of goods or services. While the cost item description should stipulate the applicable compensable units of goods or services, it should also be specified within each blank cost cell. Examples: \$ ___ / hour, or \$ ___ / each, etc.

The Cost Proposal format should not require calculations by Respondents.

The Cost Proposal & Scoring Guide (and the associated *pro forma* contract payment methodology) must be drafted such that NO Respondent proposes a total cost equal to zero. This is critical if the cost proposal evaluation formula is to mathematically result in rational numbers as cost proposal scores. (In some instances, it might be necessary to require a minimum proposed amount for one or more compensable units.)

Note: A RFP is not the correct solicitation choice if the procurement is for certain categories of professional services (e.g., attorneys, financial advisors, or engineers). Please refer to the RFQ Template and see Tenn. Code Ann. § 12-3-103 and 12-4-107 for more information. State Building Commission (SBC) approval may be required to approve the procurement of architectural or engineering services. Please contact STREAM for more information.

EVALUATION FACTORS — A factor associated with each cost item is used to foster reasonable, competitive pricing for all compensable units and to prevent Respondents from offering prices with the intent of gaming the evaluation model but not resulting in the best overall cost to the state. The use of Evaluation Factors should also result in a more appropriate consideration of each cost item in terms of its relative impact upon the total cost to the State under any contract awarded pursuant to the RFP.

Typically, all Evaluation Factors must be based upon:

- historic data relating to the number of the associated compensable units previously bought by the state for a comparable period; OR
- the procuring state agency's reasoned projection of the actual number of each compensable unit that the state will buy during the entire contract period (including all renewals or extensions of the contract).

If one or more milestone or other lump sum type payment amounts are included in the mix of cost items, the logical Evaluation Factor for each milestone or lump sum cost item should typically be "1" since each payment amount would be remitted only one time.

Do NOT assume automatic approval of proposed Evaluation Factors. Procuring agency staff may be required to justify and explain in detail the basis for each proposed Evaluation Factor.

Option: Cost Proposal Format Default – ONE Payment Rate Per Cost Item (static or CPI-escalated).

Use the default Cost Proposal schedule if the Respondents must offer only one rate per compensable unit for the entire contract period (with or without rate escalation provisions are detailed in the *pro forma* contract).

Option: Cost Proposal Format – Unit or Temporal Rate Payments (proposed by period).

Use the following table if Respondents must offer rates for one or more compensable units for each of several specified periods of the contract.

Option: Cost Proposal Schedule

If it is beneficial to the State, the number of days that the Cost Proposal shall remain valid may be revised to a number not less than thirty (30) days.

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for providing goods or services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract, for the entire contract period. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

ADDITIONAL REQUIREMENTS FOR COMPLETING PROPOSED COST (I.E., MINIMUM AMOUNT, "BLANK" CELLS, ETC.)

NOTICE: The Evaluation Factor associated with each compensable unit is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract, Section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request any goods or services from the Contractor in any specific dollar amounts or to request any goods or services at all from the Contractor during any period of this Contract."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to this RFP. If the individual signing this Cost Proposal is not the *President* or *Chief Executive Officer*, the Respondent must attach evidence to the Cost Proposal showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:								
PRINTED NAME & TITLE:								
DATE:								
RESPONDENT LEGAL ENTITY NAME:								
Cost Item Description	Proposed Cost					State Use ONLY		
	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	Sum	Evaluation Factor	Evaluation Cost (sum x factor)
DESCRIPTION	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER	

RESPONDENT LEGAL ENTITY NAME:									
Cost Item Description	Proposed Cost					State Use ONLY			
	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	DATE— DATE	Sum	Evaluation Factor	Evaluation Cost (sum x factor)	
REPEAT AS NECESSARY	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT	\$ / UNIT		NUMBER		
TOTAL EVALUATION COST AMOUNT (sum of evaluation costs above):									
The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.									
$\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}}$						$\times \text{RFP } \S 5.1. \text{ NUMBER}$	$=$	SCORE:	
State Use – Solicitation Coordinator Signature, Printed Name & Date:									

Option: Cost Proposal Format – No Evaluation Factors Column

In those instances where the relative importance of ALL cost items is equal (for example, if contract payments will be only based on milestone/ lump sum type payments in which the sum of all of the cost items would equal the anticipated cost of the contract), all Evaluation Factors would equal “1.” Towards that end, it is acceptable to draft the cost proposal format without the preamble notice relating to Evaluation Factors, without the Evaluation Factor column, or the Sum and Evaluation Factor columns.

Option: Cost Proposal & Scoring Guide.

Revise the Cost Proposal & Scoring Guide detailed in the template, as appropriate, to direct Respondents to complete a protected spreadsheet (“protected” so that Respondents may only insert proposed cost as required) provided by the State along with the RFP in lieu of completing the cost proposal table illustrated in the guide.

6.4. REFERENCE QUESTIONNAIRE ATTACHMENT**Option: Questionnaire Revision.**

Add, delete, or revise questionnaire items as appropriate to the subject procurement so that the State has the best possible information upon which to make a contractor selection.

Option: Revised Reference Requirements.

Revise the number of required references as appropriate. Revise the template text, as appropriate, to detail an alternate process for obtaining and evaluating references. Any such revision must be exactly detailed and clearly uniform in application with all Respondents.

6.5. SCORE SUMMARY MATRIX ATTACHMENT

Replace the RFP Attachment 6.5. table with the following replacement table ONLY IF points will be allocated for the Oral Presentation.

RFP ATTACHMENT 6.5.

SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
ORAL PRESENTATION/ FIELD TEST (maximum: § 5.1. NUMBER)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: § 5.1. NUMBER)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: NUMBER)						
<i>Solicitation Coordinator Signature, Printed Name & Date:</i>						

6.6. PRO FORMA CONTRACT ATTACHMENT

Draft the *pro forma* contract in accordance with the current FA Template.

Option: Disclaimer for Government Entity Contracts.

Add the following optional text to the attachment cover page if deemed appropriate.

If the contract is awarded to a governmental entity established pursuant to *Tennessee Code Annotated* and separate and apart from the State (e.g., a human resource agency, a developmental district, etc.), the standard terms and conditions of the contract shall be revised accordingly.

ALTERNATE LANGUAGE IF TERMS AND CONDITIONS NEGOTIATIONS ALLOWED - CPO USE ONLY

This template prescribes the format and content of alternate language to include in a Request for Proposals (RFP) when redlines are permitted. All respondents shall be given fair treatment, therefore comparable information shall be provided in communications and negotiations and a consistent evaluation process and criteria shall be upheld throughout the procurement. For additional information regarding negotiations, please see *Policy Number 2012-001 Central Procurement Office Contracting Communications and Negotiations Policy & Procedures for Procurements and Amendments* on the [CPO Library Webpage](#).

Add all of the following sections to the RFP ONLY if it would benefit the State to consider changes to the *pro forma* contract. Inclusion of these terms requires prior review and approval by CPO Legal. For consistency throughout the RFP, delete and replace all of the standard terms and replace or add with the following if redlines are permitted. Please note that inclusion of these terms may result in the need to issue an amendment to provide approved language options to all potential respondents.

3.3. Response & Respondent Prohibitions

3.3.1 A response must not include alternate contract terms and conditions, except as otherwise permitted by the RFP. If a response contains such terms and conditions the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.

5.3 Contract Award Process

5.3.4 Subject to agreement on the exceptions permitted by RFP Attachment 6.2 – B.#., the Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract except as modified by any mutually agreed to exceptions permitted by RFP Attachment 6.2 – B.#. The Respondent must sign the Contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.

RFP ATTACHMENT 6.2.- SECTION B.

	B.#.	The Respondents are permitted to submit, as part of their Response, a “redline” of RFP Attachment 6.6, <i>Pro Forma</i> Contract, that tracks the Respondents’ request for alternative or supplemental contract language. The redline changes that are allowed by this provision shall not include any exceptions or changes that (1) contradict any applicable state or federal law; (2) a mandatory requirement identified in RFP Attachment 6.2. – Section A; or (3) alter any deadlines in the Schedule of Events.	
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**FIRST TENNESSEE HUMAN RESOURCE
AGENCY (FTHRA)**



First Tennessee Human Resource Agency

Procurement Policy

Updated December 2021

UPDATED DECEMBER 2021	1
INTRODUCTION.....	5
1). AUTHORITY AND SCOPE.....	6
1.1 Authority	6
1.2 Governing Board	6
1.3 Scope.....	6
2) STANDARD OF CONDUCT	6
2.1 Personal Interest of Officers.....	6
2.2 Bidding by FTHRA Employees	6
2.3 Acceptance of Gifts from Contractors	6
2.4 Penalties.....	6
3) VENDORS	7
3.1 Qualifications	7
3.1.1 Responsible Vendor	7
3.1.3 Prequalification of Vendors	7
3.2 Vendor Guidelines	7
3.2.1 Visits by Salespersons	7
3.2.2 Purchase Orders	8
3.2.3 Products and Equipment	8
3.2.4 Packaging.....	8
3.2.5 Backorders.....	8
3.2.6 Substitutions.....	8
3.2.7 Delivery.....	9
3.2.8 Receipt of Goods	9
3.2.9 Inspection	9
3.2.10 Complaints and Default	9
3.2.11 Restraint of Trade	9
3.3 Payments	9
3.3.1 Advance Payments	9
3.3.2 Progress Payments	10
4) PROTEST PROCEDURES.....	10
4.1 Disputes	10
4.2 Protests	10
4.2.1 Protests Prior to Award	10
4.2.2 Protests After Bid Opening/Receipt of Proposals	11
5) PURCHASING THRESHOLDS.....	11
5.1 Micro-Purchase Less Than \$3,000.....	11
5.2.1 Per Unit Value Greater than \$5,000 and Useful Life Greater than 1 Year.....	12
5.3 Formal Purchases Exceeding \$25,000	13
5.4 Restricting Competition.....	13
5.4.1 Unreasonable Requirements	13
5.4.2 Arbitrary Action	13
5.4.3 Brand Name.....	13
5.4.4 Organizational Conflict of Interest	13
6) PROCUREMENT METHODS.....	14
6.1 Information for Bids (IFB).....	14
6.1.1 Sealed Bids Guidelines	14
6.2 Request for Proposal	15
6.2.1 Request for Proposal Guidelines.....	15
6.3 Sole Source	16
6.3.1 Sole Source Justification	16
6.3.2 Sole Source Procedures	16
6.4 Special Procurement Methods	17
6.4.1 Architectural & Engineering Contracts.....	17
6.4.2 Joint Procurements/Piggybacking.....	17

6.4.3	Design Build	18
6.4.4	Design-Bid-Build	18
7)	PROCUREMENT PROCEDURES	19
7.1	<i>Pre-Solicitation Process</i>	19
7.2	<i>Pre-Award Process</i>	19
7.3	<i>Post Award Process</i>	19
7.4	<i>Cost and Price Analysis</i>	20
7.4.1	Federal Cost Principles	20
7.4.2	Cost or Price Analysis for Micro and Small Purchases	20
7.4.3	Cost or Price Analysis for Competitive Purchases	20
7.4.4	Price Analysis Procedures	20
7.4.5	Cost Analysis Procedures	21
7.5	<i>Other Purchases</i>	21
7.6	<i>Evaluation</i>	21
7.6.1	Evaluation of Options	22
7.6.2	Geographic Preference	22
7.6.3	Out of Scope Changes	22
7.6.4	Qualifications Exclude Price	22
8.1	<i>Contract Award</i>	22
8.1.1	Firm Fixed Price Contracts	22
8.1.2	Term Contracts	22
8.1.3	Time and Materials Contracts	23
8.1.4	Cost Plus Percentage of Cost	23
8.1.5	Retainer Contracts	23
8.2	<i>Contract Terms</i>	23
8.2.1	Period of Performance	23
8.2.2	Liquidated Damages	23
8.2.3	Serial Price Negotiations (A&E)	23
8.2.4	BID Guarantee	23
8.2.5	Performance Bond	23
8.2.6	Payment Bond	23
8.2.7	Contract Clauses	24
8.2.8	Veteran's Preference/Employment	24
8.2.9	SAM/EPLS Debarment and Suspension	24
8.2.10	Termination	24
8.2.11	Disadvantaged Business Enterprise (DBE)	24
8.2.12	Cardinal Changes/Tag Ons	24
8.2.13	Revenue Contracts	25
8.2.14	State and Local Government Purchasing Schedules	25
8.2.15	Exercise of Options	25
8.3	<i>Contract Management</i>	25
8.3.1	Oversight of Sub-Recipients	26
9)	PROCUREMENT FILE REQUIREMENTS	27
	APPENDIX A: VENDOR RESPONSIBILITY DETERMINATION FORM	29
	<i>Vendor Responsibility Determination Form</i>	29
	APPENDIX B: MICRO-PURCHASE CERTIFICATION FORM	30
	APPENDIX C: INDEPENDENT COST ESTIMATE	31
	<i>Independent Cost Estimate</i>	31
	APPENDIX E: SOLE SOURCE JUSTIFICATION	33
	APPENDIX F: COST ANALYSIS FORM	34
	APPENDIX H: REGISTER OF PROPOSALS	39
	REGISTER OF PROPOSALS	39
	APPENDIX I: EVALUATION FORM	40
	PROPOSAL EVALUATION FORM	40
	APPENDIX J: FEDERAL CLAUSE MATRIX	41

APPENDIX K: PROCUREMENT FILE CHECKLIST	45
APPENDIX L: VENDOR CERTIFICATIONS	46
APPENDIX M: SAMPLE CONTRACT	47
Federal and FTA Clauses	50

INTRODUCTION

Presented herein are proposed rules of the First Tennessee Human Resource Agency, Please see Tennessee Code Annotated, Section 13-26-104; 2CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and FTA Circular 4220.1F, Third Party Contracting Guidance. These procedures provide standards for use by the First Tennessee Human Resource Agency, hereinafter referred to as FTHRA, for all grant programs unless otherwise stated in individual grant contracts or applicable laws or administrative directives. Unless otherwise noted herein, the Executive Director shall be responsible for the administration of these procedures.

1). Authority and Scope

1.1 Authority

The First Tennessee Human Resource Agency was established pursuant to Tennessee Code Annotated: 13-26-101 et seq.

1.2 Governing Board

The membership of the FTHRA Governing Board is comprised of the chief elected officials of the various towns, cities, and counties in the First Tennessee Region.

1.3 Scope

The FTHRA is empowered, in order to carry out its overall responsibility for administering a human resource program, to own and dispose of property both real and personal and to receive and administer funds and contributions from private or local public sources which may be used in support of a human resource program, and funds under any federal or state assistance program pursuant to which the FTHRA could serve as grantee, contractor, or sponsor of projects appropriate for inclusion in a human resource program.

2) Standard of Conduct

2.1 Personal Interest of Officers

As provided in the Common Grant Rules and in the FTA Master Agreement, no employee, officer, agent or board member, or his or her immediate family member, significant other, partner, other or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. No officer, committeeman, director or other person whose duty it is to vote for, let out, overlook, or in any manner superintend, any work or any contract in which the "FTHRA" is or may be interested, shall benefit directly or indirectly in any such contract.

2.2 Bidding by FTHRA Employees

No FTHRA official or employee shall bid on, or sell, or offer for sale, any merchandise, equipment or material, or similar commodity, to the FTHRA during the tenure of his office or employment, or for six (6) months thereafter, or to have any interest in the selling of the same to the FTHRA.

2.3 Acceptance of Gifts from Contractors

No FTHRA official or employee charged with the responsibility of initiating requisitions, purchase orders or awarding contracts, shall solicit or accept gifts, gratuities, favors, or anything of monetary value, directly or indirectly, from any person, firm, corporation or vendor to whom any contract for or the purchase of materials, supplies, or equipment may be awarded. There may be exception for circumstances in which the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

2.4 Penalties

To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions or other disciplinary action for violation of such standards by officers, employees, agents, board members or by contractors, subcontractors or their agents.

3) Vendors

3.1 Qualifications

3.1.1 Responsible Vendor

FTHRA shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Responsibility may be affected by new information up to the time of contract award. Responsibility determination factors include whether the prospective contractor has:

1. The appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate the vendor's capability to meet all contractual requirements;
2. The capability to comply with the required delivery schedule considering all their existing business commitments;
3. A satisfactory record of performance;
4. A satisfactory record of integrity;
5. Legal qualification to contract with grantee; and compliance with supplying all necessary information in connection with the inquiry concerning responsibility.

A Vendor Responsibility Determination Form will be required for all purchases exceeding \$25,000. (Appendix A)

3.1.3 Prequalification of Vendors

FTHRA may prequalify people, firms, or products for participation in procurements provided that:

1. Lists used in acquiring property and services are current;
2. Lists include enough qualified sources to ensure maximum full and open competition;

FTHRA will permit potential bidders or proposer to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. However, evaluations for prequalification will not be accelerated or truncated to accommodate potential bidders during this process. Furthermore, FTHRA will not hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation.

3.2 Vendor Guidelines

All vendors must comply with the Laws of Tennessee which require such person or entity to be authorized and/or licensed to do business in this State. Applicable statutes may exempt or exclude the successful vendor from requirements that it be authorized and/or licensed to do business in this State. Notwithstanding this fact, all matters and disputes arising or to arise under the Contract and performance thereof shall be subject to the jurisdiction and process of the Courts of the State of Tennessee, including any questions as to liability for taxes, licenses or fees levied by the State or its political subdivisions.

3.2.1 Visits by Salespersons

Visits by salespersons to the FTHRA are welcome and encouraged. It is recognized that valuable, specialized and current information can be imparted to the staff through these interviews. Salespersons are requested to schedule their visits by telephoning for appointments in order to more productively utilize the time of both buyers and salespersons.

3.2.2 Purchase Orders

The successful vendor will receive a purchase order or notice of contract award from the FTHRA. The FTHRA Purchase Order number or Departmental Requisition number must be shown on all bills of lading, packing slips, back orders, invoices, and other correspondence related to the purchase. The receipt of a purchase order for a one-time market purchase authorizes shipment. Shipment against Term Contracts is authorized by receipt of an FTHRA Departmental Requisition.

A vendor who manufactures or delivers an order without a written purchase order or who delivers a product or service not specifically authorized by the purchase order does so at his own risk.

The FTHRA is not required to submit a purchase order for certain purchases as listed below unless purchased from Term Contracts. These purchases, however, may be governed by other law or regulation and may require approval by a State Agency. Current approving requirements are noted.

1. Purchases of up to \$500 unless the item(s) is procured pursuant to a contract entered into by the FTHRA.
2. Newspaper, radio, or television advertisements.
3. Freight charges not incurred in connection with the purchase of supplies and equipment.
4. Postage charged including the purchase of metered postage.
5. Bonding fees or Notary Public fee.
6. Building permits, deed registration fees, and/or court fees.
7. Utility billings and connection fees.
8. Tuition, fees and supplies for training of individuals.
9. Occasional charges for rooms for meetings, and attendant expenses.
10. Expenses in connection with meetings such as coffee and doughnuts.
11. Rental of vehicles while on approved travel.

No cancellation of FTHRA Purchase Orders may be made except in writing by the Executive Director. Orders may be cancelled without the consent of the contractor in case of any default by the contractor. A contractor may request cancellation and the FTHRA may grant relief if the contractor is prevented from performance by an act of war, order of legal authority, act of God or other unavoidable causes not attributed to the fault or negligence of the contractor. The burden of proof for such relief rests with the contractor. The FTHRA shall have the right to disqualify any contractor who defaults on any Contract with the FTHRA from future bidding.

3.2.3 Products and Equipment

All supplies and equipment offered and furnished must be new unless the Invitation to Bid specifically permits offers of used items. Remanufactured or re-conditioned items are not considered new. When Invitations to Bid 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.

3.2.4 Packaging

All packaging shall conform to the current standards acceptable to the trade and required by ICC regulations. A packing slip or invoice must accompany all shipments and must reference the purchase order number.

3.2.5 Backorders

If it is necessary to back order any items, the vendor should notify the consignee and advise the expected shipping or delivery date. If this date is not acceptable, the FTHRA may seek remedies for default.

3.2.6 Substitutions

Substitution is defined as shipment of an item that materially conforms to the specifications but is technically different from the item bid. Substitutions shall require the approval of the FTHRA prior to shipment. Any products delivered that do not meet specifications will be returned to the vendor at their expense.

3.2.7 Delivery

The number of calendar days required for delivery after receipt of order shall be stated in the Invitation or the Bid, and when no time is stated in either document, the time shall be two weeks. Shipments must be made within this period, in default of which may require the FTHRA to seek remedies.

Delivery by a contractor to a common carrier does not constitute delivery to the FTHRA. Any claim for loss or damage incurred during delivery shall be between the contractor and the carrier. The FTHRA shall note all damages on the freight bill and refuse the merchandise. The contractor shall make immediate replacement of the damaged merchandise or be subject to damages for breach of Contract. If damage is to a small portion of a total shipment and the agency will not be inconvenienced because of the shortage, the vendor may be permitted by the FTHRA to deduct the amount of damage or loss from his invoice, in lieu of replacement.

3.2.8 Receipt of Goods

Shipments will be checked against the receiving copy of the purchase order. Quantities, descriptions, and units on all shipping documents must match the purchase order. Any difference in quantity or type of goods will be noted on the purchase order and on all copies held by the delivery person, including the shipping list retained by FTHRA. Any discrepancies from the original order must be noted by the person receiving the goods. Verification receipt of correct goods and quantities will be documented by FTHRA personnel signing and dating the receiving copy of the purchase order and packing/shipping list. The verified purchase order and verified packing/shipping list will then be forwarded immediately to the FTHRA Fiscal Department for payment. Payment will not be processed without written verification of receipt of goods. If the Contract required grading certificates, or any other proof of quality, such proof must accompany the shipment.

3.2.9 Inspection

All materials, equipment and supplies are subject to inspection and test. Items that do not meet specifications will be rejected. Failure to reject upon receipt, however, does not relieve the Contractor of liability. When subsequent tests, after receipt, are conducted and when such tests reveal a failure to meet specifications, the FTHRA may seek damages regardless of whether a part or all of the merchandise has been consumed.

3.2.10 Complaints and Default

Any deficiencies in products or vendor performance will be reported to the vendor. The vendor will be expected to provide a written response. Vendors who do not respond promptly are subject to disqualification in future bidding.

In case of any default of the contractor, the FTHRA may procure the product or services from other sources and hold the contractor responsible for any damages incurred, including but not limited to, excess cost or handling charges.

Payment for any item delivered may be withheld until all requirements of the Contract have been complied with in full.

3.2.11 Restraint of Trade

FTHRA will not support noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

3.3 Payments

3.3.1 Advance Payments

In general, FTHRA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor. If a circumstance warrants an advance payment, written concurrence shall be obtained from FTA prior to payment being made

3.3.2 Progress Payments

Progress payments may be made if the following applies:

- 1) They are only made to the contractor for costs incurred in the performance of the contract.
- 2) Adequate security is obtained (such as taking title, letter of credit or equivalent means).

4) Protest Procedures

There are three basic types of protests, based on the time in the procurement cycle when they occur.

- A **pre-bid** or solicitation phase protest is received prior to the bid opening or proposal due date.
- A **pre-award** protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
- A **post-award** protest is a protest received after award of a contract.

4.1 Disputes

FTHRA will work with contractors and vendors to resolve disputes arising from its procurement of goods and services. Disputes will be resolved through negotiation between the vendor and FTHRA personnel. In the case that disputes cannot be resolved between these parties, the Executive Director may render a decision on the matter. However, the vendor may request in writing, an appeal to the FTHRA Policy Council. Nothing in this policy mitigates the right of the vendor to seek legal remedy in a court of competent jurisdiction.

FTHRA may seek the assistance of the grantor agency in resolving disputes.

4.2 Protests

Protests will only be accepted by FTHRA from prospective bidders or bidders whose direct economic interest would be affected by the award of a contract or refusal to award a contract. FTHRA will consider all such protests, whether submitted before or after the award of a contract. All protests must be in writing and conform to the following requirements:

1. Be concise and legally arranged.
2. Provide name, address and telephone numbers of protestor.
3. Identification of the solicitation or contract number.
4. Provide a clear and detailed statement of the legal and factual grounds of the protest including copies of all relevant documents.
5. Provide a statement as to what relief is requested.

4.2.1 Protests Prior to Award

Protests before award must be submitted within the time frame specified below. If the written protest is not received by the time specified, the bid or evaluation process shall continue.

Protests addressing the adequacy of the Invitation to Bid or request for proposal, including the pre-award procedure, the Instruction to Bidders, General terms and conditions, specifications and scope of work, must be filed with FTHRA not less than seven (7) full working days before bid opening or date of receipt for proposals. Thereafter, all issues and appeals are deemed waived by all interested parties.

Upon receipt of the written protest, FTHRA will determine if the bid opening or date of receipt for proposals should be postponed. If the bid opening or due date is postponed, an appropriate addendum will be issued regarding a rescheduling of the bid opening.

Any protest may be withdrawn at any time before FTHRA has issued its decision.

4.2.2 Protests After Bid Opening/Receipt of Proposals

Any party aggrieved by an award of a contract may protest to the Executive Director, in writing, within seven days after such aggrieved party knew or should have known of the facts giving rise thereto. Such protest shall include the detailed facts leading up to the protest. The Executive Director is authorized to settle and resolve any protest relating to the solicitation or contract award. Protests received later than 30 days after bid opening or the receipt of proposals shall not be considered.

In the absence of a settlement, the Executive Director shall make his or her decision known, in writing, within one week of receipt of the protest. Such decision shall respond, in detail, to each substantive issue raised in the protest.

The written decision of the Executive Director shall be final, binding, and conclusive on the parties.

Protests should be transmitted to:

First Tennessee Human Resource Agency
Attn: Executive Director
704 Rolling Hills Drive
Johnson City, TN 37604

Protests will only be entertained by the Federal Transit Administration if the aggrieved party is alleging that FTHRA does not have, or is failing to follow, written protest procedures (Federal Circular 4220.1 F).

5) Purchasing Thresholds

A review of all proposed procurements shall be conducted to avoid purchase of unnecessary or duplicative items. Ensuring an economic purchase could include breaking out or combining purchases, or using annual contracts and performing a lease versus buy analyses to ensure the most economical approach.

Type of Purchase	Amount	Signatory Authority
MICRO-PURCHASE	< \$3,000	Department Head
SMALL PURCHASE	\$3,000-\$25,000	Department Head
FORMAL PURCHASE	>\$25,000	Executive Director/ Chairman of the Board

5.1 Micro-Purchase Less Than \$3,000.

Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived. The buyer must affirmatively state that he/she has determined the price is reasonable based on such facts as recent agency purchases, prices published by vendors in catalogs or online, prices offered by local stores, etc. The Procurement file must include a Micro-Purchase Certification Form (see Appendix B).

- With respect to micro-purchases (less than \$3,000) for non-construction contracts, there are no clause requirements; however, there are two clause requirements for construction contracts which have a value less than \$3,000 but in excess of \$2,000 — the Davis Bacon Act and Copeland Anti-Kickback Act.

5.2 Small Purchase Between \$3,000-\$25,000

All purchases or sales between \$3,000 and \$25,000 in amount may be made in the open market without advertised or public notice. The requisitioner must complete an Independent Cost Estimate (Appendix C) . The Independent Cost Estimate (ICE) shall identify the details of items or services to be purchased and ensure the benefit of the purchase warrants the cost. The form shall include (where applicable): product needed, quantity, unit price, delivery schedule, freight costs and warranty. Purchase of services should include the skill level and type of position needed, estimated hours, salary and/or billing rates, and any other direct fee. Supporting information may be located by current or past contracts for similar services, recent purchases by other similar agencies, Bureau of Labor Statistics (<https://www.bls.gov/data/>), US General Services Administration (<https://calc.gsa.gov/>).

Informal quotes will continue to be sought on all items. It is recommended where practical to receive 3 quotes. Quotes may be obtained by telephone, soliciting informal quotations, catalogs, routine calls from representatives, or other methods deemed necessary by the Executive Director. A Price Analysis Form (Appendix D) form will be completed for all purchases exceeding \$3,000. Requisitions for items estimated to cost more than \$3,000 shall not be subdivided in order to circumvent the requirement for competitive procurement.

5.2.1 Per Unit Value Greater than \$5,000 and Useful Life Greater than 1 Year

State Management Plan Requirements for TDOT Concurrence

For procurements of consultant services and for procurements of assets with a per unit value of at least \$5,000 or a useful life of more than one year, that are purchased with state or federal funds that have been awarded to FTHRA by TDOT, concurrence is required at several points in the procurement process as shown below.

Phase	Form Required	Information Required
Planning	Procurement Planning Form	<ul style="list-style-type: none"> • General description of goods/services to be procured • Reason for the procurement • Technical assistance needed if applicable • Anticipated method of procurement • Approximate value of procurement • Description of how the procurement will be executed • Applicability of Buy America requirements • Cost/price analysis
Prior to Advertising	Request to Proceed with Procurement	<ul style="list-style-type: none"> • Description of how the procurement will be executed • Description of the process used for free and open competition • Full technical specifications of items for bid • Draft Request for Bids or Request for Proposal • Proposal Evaluation sheet
Prior to Signing a contract	Request to Enter into Contract	<ul style="list-style-type: none"> • Bid Tabulation Sheet • Sample Newspaper Advertisement of Bid • Sample Third-Party Contract Agreement • Approximate value of procurement • Identification of the prime contractor and any subcontractors

		<ul style="list-style-type: none"> • Verification of Tennessee Uniform Certification Program (TUCP) for Disadvantaged Business Enterprise (DBE) certification for the prime contractor or subcontractors, if applicable • Plan for monitoring to ensure that DBEs perform the work (if DBEs are included) • Information about whether any preference was given based on geographic location • Information about whether the proposed contractor is responsive and responsible • Screen print from SAM.gov search for debarment and suspension • Pre-award Buy America certification (vehicles) • Pre-award Buy America audit (vehicles) • Altoona bus testing report (vehicles) • In-plant inspection (urbanized areas greater than 200,000 people procuring more than 10 vehicles) • In-plant inspection (rural and urbanized areas 200,00 or fewer in population procuring more than 20 vehicles) • Transit Vehicle Manufacturers (TVM) certification • Federal Motor Vehicles Safety Standards (FMVSS)
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5.3 Formal Purchases Exceeding \$25,000

Except as permitted by Federal law or regulations, the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The Federal Transit Administration’s (FTA) enabling legislation at 49 U.S.C. Section 5325(a), also requires an FTA recipient to conduct all third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA.

All purchases or sales of more than \$25,000 in amount will require advertised procurement. All solicitations shall identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals. The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance. This ensures procurements are awarded in a fair and equitable manner. The acceptable methods of procurement will include Invitation to Bid, Request for Proposal or Sole Source Procurement.

5.4 Restricting Competition

5.4.1 Unreasonable Requirements

Solicitations shall not inadvertently restrict competition by placing unreasonable requirements on vendors, such as, unnecessary experience and/or excessive bonding requirements.

5.4.2 Arbitrary Action

Any arbitrary action in the procurement process is considered to be restrictive of competition. Proper file documentation can help evaluate whether or not an arbitrary action occurred.

5.4.3 Brand Name

Solicitations shall not list only a “brand name” product. Instead, an equal product must be allowed and the required salient characteristics must be listed.

5.4.4 Organizational Conflict of Interest

An organizational conflict of interest is considered to be restrictive of competition. An organizational conflict of interest exists if:

- Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
 - A contractor's objectivity in performing the contract work is or might be otherwise impaired;
- or
- A contractor has an unfair competitive advantage.

6) Procurement Methods

6.1 Information for Bids (IFB)

Sealed bidding is the generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price. The basic elements are:

- Precise Specifications that are complete and realistic or a detailed purchase description.
- Adequate Sources where three or more bidders are willing and able to compete effectively for the business.
- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.
- The successful bidder will be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.
- Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

6.1.1 Sealed Bids Guidelines

The Invitation for Bids (IFB) should be completed based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. The IFB will also:

- 1) a. Clearly state the date and time in which bids will be accepted.
b. The method for submitting bids (mail, electronic, drop off at office).
c. The length of time for which the offer must remain firm.
d. Clear instructions as to what must be submitted with bids.
- 2) Solicitation should be sought from three or more responsible bidders to assure full and free competition consistent with the procurement of the required supplies or services.
- 3) The Bid Advertisement will be publicized through distribution to prospective bidders, advertising in newspapers and/or trade journals, and such other means as may be appropriate, in sufficient time to enable bidders to prepare and submit their best bids before the time set for public opening of bids.
- 4) Bids should allow adequate time for submission consistent with size and type of procurement.
- 5) All bids will be publicly opened at the time and place prescribed in the Invitation for Bids. The bid opening is a public event: guest, visitors and vendors will be permitted to witness the opening.
- 6) Bids must be received in the FTHRA's office on or before the date and hour designated for the bid opening or the bid will be rejected and placed in the file unopened.
- 7) Bids may be modified or withdrawn by written notice. The notice must be received in writing by FTHRA no later than the exact time set for bid opening.
- 8) FTHRA may reject any or all bids. Action to reject all bids shall be taken only for unreasonably high prices, errors in the Invitation to Bid, cessation of need, unavailability of funds, or any other

reason approved by the Executive Director. The Executive Director may authorize rejection for failure to secure adequate competition.

6.2 Request for Proposal

Competitive proposal is the generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and more than one source is expected to be willing and able to submit an offer or proposal. Competitive proposals should be used when any of the following circumstances are present:

- The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
- Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and there is not authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.
- Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
- Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with Sealed Bids procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.

6.2.1 Request for Proposal Guidelines

The following procedures apply to procurements by competitive proposals:

1. The request for proposals must be publicly advertised.
2. All evaluation factors and their relative importance should be specified in the solicitation. Note: it is not necessary to disclose numerical or percentage ratings or weights.
3. Proposals must be solicited from an adequate number of qualified sources. All proposals should be sealed/kept confidential until closing date for proposal acceptance.
4. A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
5. An award will be made to the responsible offeror whose proposal is most advantageous based on price and other factors considered.
6. The contract may be awarded to the offeror whose proposal provides the greatest value to the agency. In this scenario, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The

determination of which proposal represents the “best value” will be based on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

6.3 Sole Source

Normally, full and open competition is the best method of procurement. However, the Common Grant Rule does acknowledge that a sole source procurement is appropriate under the certain circumstances.

Noncompetitive proposals may only be used when the procurement is inappropriate for small purchase procedures, sealed bids or competitive proposals.

Several sources should be solicited in order to see if there are multiple sources available and/or willing to participate in the procurement. If the response is not adequate, then the specifications should be reviewed to ensure they are not unduly restrictive. If possible, changes should be made to the specifications to allow for full and open competition before determining that a sole source procurement is acceptable.

6.3.1 Sole Source Justification

At least one of the following circumstances must be present to justify noncompetitive purchases.

Unique Capability or Availability - The vendor demonstrates a unique or innovative concept or capability not available from other sources. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available only from one source and has not been available from other sources in the past.

Patents or Restricted Data Rights

Patent or data rights restrictions preclude competition.

Substantial Duplication Costs

In the case of continued development or production of a specialized project where it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

Unacceptable Delay

In the case of continued development or production of a specialized project where it is likely that award to another vendor would result in unacceptable delays in progress of the project.

Single Bid or Proposal

Upon receiving a single bid or proposal in response to a solicitation, a determination must be made to determine if competition was adequate. This should include a review of the specification for undue restrictiveness, such as using brand names instead of salient characteristics and might include a survey of potential sources that chose not to submit a bid or proposal.

Unusual and Compelling Urgency

The Common Grant Rule for governmental agencies permits limiting the number of sources from which bids or proposals are solicited when there is an unusual and urgent need for the product and/or service which would result in serious injury. Use of noncompetitive procurement may also be justified in the event of public exigency or emergency.

6.3.2 Sole Source Procedures

The following must be completed for every sole source purchase that exceeds the simplified acquisition threshold:

1. A Sole Source Justification form (Appendix E).
2. A Cost Analysis (Appendix F).

6.4 Special Procurement Methods

6.4.1 Architectural & Engineering Contracts

Qualification-Based Requirements

Projects related to or leading to construction will be conducted as qualifications-based procurements. This will include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services.

Relation to Construction

The nature of the services to be performed and its relationship to construction will determine whether qualifications-based procurement procedures may be used.

Purpose of Services- Qualification-based procurement is only intended for service that directly support or are directly connected or related to construction, alteration, or repair of real property.

Brooks Act- Qualification-based procurement procedures will be limited to research, planning, development, design, construction, alteration or repair of real property. Thus, if services, such as program management, feasibility studies, or mapping are not directly in support of, directly connected or related to, or lead to the construction, alteration or repair of real property, then qualifications-based procurement is not allowed.

Requirements in the Context of a Construction Project- A project involving construction (including an ITS project) does not always require the use of qualifications-based procurement procedures. The determining factor will be the actual service to be performed in connection with the construction project.

- **End Products Used in Construction-** The design or fabrication of message signs, signals, and movable barriers, items that will be fabricated and delivered as final end production for installation are not service for which qualification-based procurement procedures may be used.
- **Services Related to Design of Construction Projects-** In contrast, program manager, project designer, construction manager, or engineer in which the contractor would select the finished products to be acquired are service for which qualifications-based procurement procedures may be used.
- **Actual Construction-** The actual construction or improvement to the real property are not service for which qualifications-based procurement procedures may be used.
- **Type of Contractor Not Determinative-** The nature of the firm performing the services does not determine whether it will be selected through the use of qualifications-based procurement procedures.

Equivalent State Laws- All A&E services must be procured using either Brooks Act or an equivalent qualifications based requirement unless required by a law adopted by the State of Tennessee before August 10, 2005.

Special Requirements for Indirect Cost Rates- Federal Acquisition Regulations (FAR) indirect cost rates are acceptable for one year accounting periods as long as they are not currently in dispute. After the indirect cost rates are accepted, they must be used for contract estimates, negotiation, administration, reporting and payments, with administrative or de facto ceiling limitation.

6.4.2 Joint Procurements/Piggybacking

FTHRA may also elect to participate in joint procurements with other recipients of financial assistance awarded under the Federal Transit Administration in order to achieve efficiencies in procurement actions and to obtain better pricing through the purchase of larger quantities. FTHRA

will ensure that all Federal requirements, required clauses and certifications are properly followed and included in the resulting joint solicitation and contract documents. FTHRA may also acquire goods or services from other FTA grantees through the assignment of contractual rights to participate in the contract. If using this process (also known as piggybacking), the Piggybacking Checklist (Appendix G), and a cost and/or price analysis must be conducted to ensure that the price is fair and reasonable.

6.4.3 Design Build

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team or partnership that will be responsible for both the project's design and construction.

1. Procurement Method Determined by Value

The activities being procured under the contract must be separated and classified as either design or construction. Then, the estimated total value of each classification must be calculated. The procurement method appropriate for the services having the greatest cost will be used for the entire project.

- a) **Construction Predominant-** The construction costs of a design-build project are usually predominant which means the use of competitive negotiations or sealed bids would most likely be the appropriate choice rather than a qualifications-based procurement. This rule applies to all services being obtained for this project including architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by a law adopted by the State of Tennessee before August 10, 2005.
- b) **Design Service Predominant-** In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, a qualifications-based (Brooks Act) procurement would be the most appropriate.

2. Selection Processes

The selection process for Design-Build procurements can be structured using one or more steps.

- a) **One-Step Method-** The entire project may be undertaken in a one single step
- b) **Two-Step Method-** Larger project may be conducted in two steps:
 - a. **Review of Technical Qualification and Approach-** The first step is a review of the prospective contractors' technical qualifications and technical approach to the project. It may be necessary to narrow the competitive range to the prospective contractors with satisfactory qualification that demonstrate a technically satisfactory approach.
 - b. **Review of Completed Proposals-** The second step consists of soliciting and reviewing complete proposals (including price) that are submitted by prospect contractors that have been considered to be qualified.

6.4.4 Design-Bid-Build

A construction project which requires the commissioning of an architect or engineer to prepare drawings and specifications under a design services contract, and separate contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project is considered a design--bid-build procurement, which requires separate contracts for design services and for construction.

- (1) Design Services. For design services, qualifications-based procurement procedures must be used, in compliance with applicable Federal, State and local law and regulations.
- (2) Construction. It is not permissible to use qualifications-based procurement procedures for the actual construction, alteration or repair of real property. Therefore, competitive procedures are usually the most likely option for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

It is a common practice in the construction industry to employ an *architect/engineer (A/E)* to complete a detailed design of the entire project before soliciting bids from construction contractors. This traditional approach is known as *sequential design and construction*. This sequential design/construction approach requires that a detailed design package of the entire project be complete before bids are solicited from construction contractors. Following award of the construction contract, the A/E is often retained by the owner for the construction phase, and acts as the owner's agent, to inspect the construction work to ensure that the structures are built according to the designs and specifications.

7) Procurement Procedures

7.1 Pre-Solicitation Process

1. Conduct market research and determine the best method of procurement
2. Develop an unrestrictive statement of work or specifications
3. Develop evaluation criteria and weight
4. Prepare an Independent Cost Estimate
5. Prepare solicitation documents
6. Complete Request to Advertise form

7.2 Pre-Award Process

1. Maintain a Register of Proposals which will be available for public inspection after the contract award. (Appendix H)
2. Open proposals at specified date/time
3. Complete responsive check
4. Determine if there are 2 or more acceptable proposals, otherwise use the Single Bid or Proposal methodology.
5. Establish an Evaluation Team.
6. Conduct discussions, clarifications and/or negotiations, if applicable.
7. Request revised submittals and/or Best and Final Offers
8. Complete Cost or Price analysis
9. Negotiate final price with top scoring vendor.
10. Conduct pre-award Buy America review or obtain waiver (if applicable)
11. Complete responsibility check
12. Review the process for arbitrary action
13. Award Contract
14. Prepare purchase order

7.3 Post Award Process

1. Conduct post-delivery Buy America audit
2. Ensure the procurement file contains complete written record of the procurement requirements
3. Receive good and/or services
4. Exercise options (if applicable)

5. Complete contract closeout

7.4 Cost and Price Analysis

FTHRA shall conduct a cost or price analysis of all procurements in accordance with the following procedures.

A cost analysis entails the review and evaluation of the separate cost elements and the proposed profit of an offeror's cost or pricing data and the judgmental factors applied in estimating the costs. FTHRA will conduct a cost analysis on procurements that exceed the simplified acquisition threshold as determined by FTA and when a price analysis is not appropriate to form an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract should cost, assuming reasonable economy and efficiency.

A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements. Price analysis is based essentially on data that is verifiable independently from the offeror's data.

7.4.1 Federal Cost Principles

The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient

Chapter IV, Section 4 C4220.1F states FTA assistance may support contract costs or prices based on estimated costs only if the costs incurred or cost estimates included in negotiated prices comply with applicable Federal cost principles, and the property or services are eligible for Federal assistance under the terms of the underlying grant or cooperative agreement.

7.4.2 Cost or Price Analysis for Micro and Small Purchases

For all micro and small purchases, the requisitioner will certify, through the use of pre-formatted standard form, that the price paid for the good or item is fair and reasonable based on a review of catalog prices, current online pricing, market prices determined from written or oral quotes, regulated prices (e.g., utilities, etc) or other similar means.

7.4.3 Cost or Price Analysis for Competitive Purchases

FTHRA will conduct formal cost or price analyses of all procurements undertaken through competitive means that exceed the simplified acquisition threshold as determined by FTA. The purpose of this analysis will be to ensure that the agency does not pay excessive or unreasonably high rates for the goods and services being procured. Identification of excessively low costs or prices will be used to determine whether or not an offeror has made a mistake or has misunderstood the specifications.

7.4.4 Price Analysis Procedures

Prior to undertaking the procurement, FTHRA will develop an independent estimate of the proper price level for the supplies or services to be purchased. The estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data (such as cost data from prior procurements). The estimate can then assist in a determination of reasonableness or unreasonableness of price.

In addition to comparison with the price estimate, FTHRA will use the following additional factors to evaluate the reasonableness of the proposed price:

1. Comparison of proposed prices received in response to the solicitation.
2. Comparison with competitive, published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements.

3. Comparison of prices received with prior procurement actions for the same or similar end items. FTHRA may acknowledge prior price comparisons may be affected by:

- a. changes in economic conditions between the times of the two procurements;
- b. differences in quantities;
- c. inclusion of nonrecurring cost in the prices, such as design, capital equipment, production facilities, etc (to make a fair comparison, nonrecurring costs can be removed from both prices).

7.4.5 Cost Analysis Procedures

FTHRA will conduct a cost analysis when the procurement exceeds the simplified acquisition threshold and requires the offeror to submit the elements of the estimated cost (e.g., professional services contracts, A/E contracts, etc.). The goal of the cost analysis is to determine whether the offeror's estimate contains an accurate and reasonable prediction of the cost incurred during performance. The contract price will be figured by adding a rate of profit that is determined to be fair.

FTHRA may use the following common cost analysis techniques to conduct this analysis:

1. Verification of cost or pricing data and evaluation of cost elements, examining the following: a. necessity for and reasonableness of proposed costs, including allowances for contingencies; b. projection of offeror's cost trends on the basis of current and historical cost or pricing data; c. technical appraisal of estimated labor, material, tooling, facilities requirements and reasonableness of scrap and spoilage factors; and d. application of audited or negotiated indirect cost rates, labor rates, etc.
2. Evaluation of the effect of the offeror's current practices on future costs. This ensures that the effects of inefficient or uneconomical past practices are not projected into the future.
3. Comparison of the individual cost elements proposed with the following:
 - a. actual costs previously incurred by the same offeror;
 - b. previous cost estimates from the offeror or other offerors for the same or similar items;
 - c. other cost estimates received in response to a specific request
 - d. elements of the independent cost estimates
 - e. verification that the offeror's cost elements are in accordance with Federal cost principles and procedures as found in FAR 31.

To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

7.5 Other Purchases

In emergency circumstances, items may be purchased through emergency procedures. Whenever practical such purchases are made from competitive bids secured by mail or telephone.

7.6 Evaluation

An Evaluation Team will be established, consisting of key personnel who have knowledge of the administrative functions and operations of the transit system.

All evaluation factors and their relative importance should be specified in the solicitation. Note: it is not necessary to disclose numerical or percentage ratings or weights. The proposals shall be evaluated according to criteria established in the RFP. A written Evaluation Form (Appendix I) shall be completed by each member of the Evaluation Team.

7.6.1 Evaluation of Options

All of the option quantities or periods contained in the contractor's bid or offer shall be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

7.6.2 Geographic Preference

Geographic Preference

FTHRA shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

7.6.3 Out of Scope Changes

Any change to a contract that is not within the scope of the original contract is considered a sole source procurement. There must be written justification as to why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation.

7.6.4 Qualifications Exclude Price

Qualifications-based competitive proposal procedures for A&E and other similar services require that:

- 1) An offeror's qualifications be evaluated.
- 2) Price be excluded as an evaluation factor.

8) *Contracts*

8.1 Contract Award

The delivery of a FTHRA Purchase Order or a notice of Contract Award with the valid signature of the Executive Director or Board Chairman constitutes acceptance of the offer to sell and consummates the binding Contractual Agreement.

Only the Board Chairman and/or the Executive Director are authorized to bind the FTHRA in Contractual Agreements. Contracts signed by other personnel are null and void and do not obligate the FTHRA to payment for goods and/or services.

The FTHRA does not sign standard Contract Forms which may be used by vendors. The bid, with the vendor's signature affixed thereto, shall constitute an offer to sell to the FTHRA under the terms and conditions contained therein.

All contracts shall include provisions to define a sound and complete agreement, which include proper specifications that allow for administrative, contractual, termination and legal remedies

8.1.1 Firm Fixed Price Contracts

When price alone is the determining factor, a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. If an offer conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the offeror, the offer will be determined to be responsive.

8.1.2 Term Contracts

FTHRA may establish a term contract for specific products or services for use by individual programs. The sealed bid procedure is generally used; however, the informal procedure may be used if total purchases are

estimated to be \$25,000 or less. After evaluation and award, a FTHRA purchase order shall be issued to the successful vendor(s).

8.1.3 Time and Materials Contracts

Time and Materials Contracts shall be used only:

- After a determination that no other type of contract is suitable
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

8.1.4 Cost Plus Percentage of Cost

FTA C 4220.1F Chapter VI, Section 2(c)(2) (a) indicates that the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

8.1.5 Retainer Contracts

FTHRA will not make a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.

8.2 Contract Terms

8.2.1 Period of Performance

FTHRA does not enter into any contract for rolling stock and replacement parts with a period of performance exceeding five (5) years inclusive of options. This promotes competition and effective contract management. In all other cases, FTHRA will exercise sound business judgment to establish contract terms no longer than necessary to accomplish the purpose of the contract.

8.2.2 Liquidated Damages

FTHRA may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. In addition, the assessment for damages shall be at a specific rate per day for each day of the overrun in contract time. The rate must be pre-determined and specified in the third party contract. Any liquidated damages that are recovered shall be credited to the project, unless FTA permits other uses of the liquidated damages.

8.2.3 Serial Price Negotiations (A&E)

- Negotiations may only be conducted with the most qualified offeror.
- If FTHRA and the contractor cannot come to an agreement on price, negotiations with the next most qualified offeror may be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable.

8.2.4 BID Guarantee

Bid Security shall:

- Equal five (5) percent of the bid price.
- Firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will execute contractual documents as may be required within the time specified.

8.2.5 Performance Bond

Performance Security:

- Is executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;
- Amount is equal to 100 percent of the contract price.

8.2.6 Payment Bond

Payment Security:

- Assures payment of all persons supplying labor and material.
- Includes required amounts as follows:
 - 1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - 2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;or
 - 3) Two and a half million dollars if the contract price is more than \$5 million.

8.2.7 Contract Clauses

The Federal Clauses (Appendix J) shall be evaluated to determine which of these requirements are relevant and applicable to each procurement. It is not acceptable to simply reference the Master Agreement/C4220.1F and leave contractors the responsibility to decide which statutes and regulations apply to a particular contract. It is FTHRA's responsibility to determine which requirements apply (e.g., Buy America) and so stating in the solicitations and contracts with suitable contract language, as well as representations and certifications.

8.2.8 Veteran's Preference/Employment

FTHRA shall ensure that contractors working on a capital project funded using federal assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. However, this requirement shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

8.2.9 SAM/EPLS Debarment and Suspension

The Excluded Parties List System (EPLS) shall be checked for every procurement exceeding \$5,000 prior to making the award. Now a part of the System for Awards Management (SAM), the EPLS is an electronic, web-based system (www.sam.gov) that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. A screenshot shall be placed in the procurement file.

8.2.10 Termination

Administrative, contractual, or legal contract remedies shall be included for instances in which a contractor violates or breaches terms of a contract that exceeds the small purchase threshold, which FTA recognizes as the simplified acquisition threshold. Termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000.

8.2.11 Disadvantaged Business Enterprise (DBE)

The contractor shall maintain compliance with "DBE Approval Certification" throughout the period of contract performance. The contractor shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the performance of the contract.

8.2.12 Cardinal Changes/Tag Ons

A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as "tag-ons." A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a "tag-on" or cardinal change. A tag-on is defined as the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition. Tag-ons are prohibited.

8.2.13 Revenue Contracts

If FTHRA enters into a contract to provide access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property is considered a revenue contract. FTHRA has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:

- (a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- (b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

8.2.14 State and Local Government Purchasing Schedules

When obtaining property or services from contracts procured by the Tennessee Central Procurement Office, the procurement must be evaluated to ensure all Federal requirements, required clauses, and certifications (including Buy America) were properly followed and included, whether in the master intergovernmental contract or in FTHRA's purchase documentation. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient's procurement. It is necessary to obtain Buy America certification before entering into the purchase order when buying from these schedules. It is also necessary to determine that the State contracts were awarded with full and open competition and were not subject to geographical preferences (e.g., giving in-state vendors a bidding preference - as some states have such practices that are prohibited by FTA). It is permissible to purchase from purchasing schedules from states other than Tennessee.

8.2.15 Exercise of Options

The Exercise of an option must be in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless it is determined that the option price is better than prices available in the market at the time the option is exercised, or that when it intends to exercise the option is more advantageous.

8.3 Contract Management

The contract administration and management function will ensure improved management of contractor performance. This means that at the contract administration level, the contract file (standing alone and without need of interpretation or augmentation of the contract administrator or other staff element) must demonstrate that the Contracting Officer and the contractor have complied with the terms of the contract (i.e., bonds have been submitted, contractual issues requiring the approval of the Contracting Officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.), and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound business judgment.

Once a contract has been awarded and duly approved, a contractual relationship exists between FTHRA and the awarded respondent. The procurement specialist will be responsible for managing the contract which includes all of the following:

1. The executed contract and notice of award;
2. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
3. Contract-required insurance documentation;
4. Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
5. Notice to proceed;
6. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
7. Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
8. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., city council, board of directors, executive director) of the settlement amount;
9. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
10. Documentation relating to contract closeout.

8.3.1 Oversight of Sub-Recipients

FTA Circular 4220.1F, Chapter 1, Section 5, states all direct recipients of FTA grants, grant amendments, and cooperative agreements in excess of \$25,000 are subject to the requirements of the Federal Funding Accountability and Transparency Act of 2006 (“FFATA”). FTHRA does not have, nor intend to have sub-recipients. However, in the event of such, we shall submit sub-recipients’ sub-award information to the FFATA Sub-award Reporting System at the end of the month after the month

As a Designated Recipient, FTHRA is responsible for the routine monitoring of sub-recipients, which includes the following:

- a. Applying for and receiving FTA grants on behalf of its Grant 5307 sub-recipients and performing on-going project management;
- b. All direct recipients of FTA grants, grant amendments, and cooperative agreements in excess of \$25,000 are subject to the requirements of the Federal Funding Accountability and Transparency Act of 2006 (“FFATA”). FTHRA shall submit sub-recipients’ sub-award information to the FFATA Sub-award Reporting System at the end of the month after the month in which any sub-award under the grant has been made and not the month after which FTA awarded the direct grant;
- c. Ensuring adherence to federal program guidelines through contractual agreements with all sub-recipients;
- d. Receiving, verifying, and submitting for reimbursements from the FTA for all eligible project expenses;

- e. Passing through the reimbursements received from FTA for all eligible project expenses;
- f. Receiving financial and status reports from all sub-recipients;
- g. Completing financial and progress status reports in the FTA electronic grants management system (TRAMS); and
- h. Other such grant administrative actions as necessary to ensure project completion in accordance with all applicable federal rules, regulations, and guidance.

FTHRA shall be responsible for monitoring sub-recipients no less than once per contract year and more often, should it be necessary. FTHRA shall assist any of its sub-recipients in setting up the monitoring in order to ensure adherence to FTA guidelines.

FTHRA's annual monitoring shall include a physical site visit to the location where the sub-recipient maintains its project records. The timing of the site visit shall occur six months from the beginning of any contract and occur at annual intervals while the contract is in force. Any deficiencies noted will result in more frequent inspections or the implementation of a corrective action plan until the deficiencies have been resolved.

Procedures for monitoring sub-recipients shall include:

- a. Review of operation of project for scope of work accuracy and efficiency.
- b. Review of the filing system, the system maintenance, and presence of grant information.
- c. Review of the grant matching documentation.
- d. Review of the sub-recipients Drug and Alcohol Policy.
- e. Review of the sub-recipients Title VI Plan and access, if there are current complaints.
- f. Review of marketing efforts associated with the project.

9) Procurement File Requirements

The minimum procurement history requirements relate to the public policy of fair and open competition and achieving the most efficient and economical use of public funds. Procurement history documentation may be in the form of written policies, directives, procedures and forms or in the written record contained in the official contract file (see Appendix K). If some contract documentation, such as technical analyses or contract administration actions, are located in another division, such as maintenance, a reference to it or "copy" should be contained in the official contract file. This will ensure that the public record is complete for every acquisition using Federal, State and local public funds. A written history for every procurement should include any of the following applicable documents:

1. Purchase request, acquisition planning information, other pre-solicitation documents,
2. Evidence of availability of funds,
3. Rationale for the method of procurement (negotiations, formal advertising),
4. List of sources solicited,
5. Independent Cost Estimate,
6. Statement of Work/ Scope of services,

7. Copies of published notices of proposed contract action,
8. Copy of the solicitation, all addenda, and all amendments,
9. Liquidated damages determination,
10. An abstract of each offer or quote,
11. Contractor's contingent fee representations and other certifications and representations,
12. Source selection documentation, if applicable,
13. Contracting Officer's determination of contractor responsiveness and responsibility,
14. Cost or Price Analysis
15. Determination that price is fair and reasonable, including an analysis of the cost and pricing data,
16. Required internal approvals for award,
17. Notice of award,
18. Notice to unsuccessful quoters or offerors and record of any debriefing,
19. Record of any protest,
20. Bid, Performance, Payment, or other bond documents, and notices to sureties,
21. Required insurance documents, if any,
22. Notice to proceed, and
23. Negotiation Memorandum.

Appendix A: Vendor Responsibility Determination Form

Vendor Responsibility Determination Form

RFP#:	Vendor:			
For each of the areas described below, check that the appropriate research has been accomplished				
	Requirement:	Y	N	Comments:
1	Appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate the capability to meet all contractual requirements			
2	Capability to comply with the required delivery schedule considering all of the vendor's existing business commitments			
3	Satisfactory record of performance			
4	Satisfactory record of integrity, not on debarred or suspended listings. (Screenshot of Sam.gov Excluded Parties List verification)			
5	Legal qualification to contract with grantee			
6	Receipt of all necessary information in connection with the inquiry concerning responsibility.			

Appendix B: Micro-Purchase Certification Form

Micro-Purchase Certification Form

All

purchases or sales of less than \$3,000 in amount may be made in the open market without advertised or public notice. Written documentation must include the method of determination that was used to ensure the price is fair and reasonable. Fair and reasonable price may be determined by cost of other recent purchases, current price lists, catalog pricing, market pricing from advertisements, etc.

Appendix C: Independent Cost Estimate

Independent Cost Estimate

An "Independent Cost Estimate" is performed before receiving bids or proposals. It improves the reliability of forecasting cost. This process is particularly significant whenever there is no price competition, or when goods or services are dissimilar, and when prices seem unreasonably high. Fill in all the cost elements applicable on the cost analysis form below and retain a comprehensive collection of all supporting documentation in the procurement files.

Item/Project:						
Requisitioner:			Date: _____			
Phone:			Email: _____			
Independent Cost Estimate						
	COST ELEMENTS			Rate per Hour/Unit	Total Hours/Units	Cost
A	Equipment Description					
1						
2						
3						
4						
5						
6						
B	Markup, Overhead, Profit					
1	Percentage (%)					
C	Other Expenses					
1	Warranty					
	Training					
2	Handling Fee					
3	Shipping Costs					
4	Rentals					
5	Leases					
6	Repairs					
7	Other Expenses					
8	Other Expenses					
9	Other Expenses					
13	Other Expenses					
TOTAL ESTIMATED COST						

Appendix D: Price Analysis Form

Price Analysis Form

Item	Equipment Description	QTY	Vendor A		Vendor B		Vendor C	
			Unit Price	Total	Unit Price	Total	Unit Price	Total
1				\$ -		\$ -		\$ -
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
			Subtotal:	\$ -	Subtotal:	\$ -	Subtotal:	\$ -
			Shipping		Shipping		Shipping	
Independent Cost Estimate:			Net Cost	\$ -	Net Cost	\$ -	Net Cost	\$ -

The Requisitioner has determined that the price is fair and reasonable based on the competitive quotes listed above and in comparison to the Independent Cost Estimate.

Signature: _____

Date: _____

Appendix E: Sole Source Justification

Sole Source Justification Form

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

The item is available only from a single source (sole source justification is attached).

The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

FTA authorizes noncompetitive negotiations (letter of authorization is attached).

After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

Independent Estimate and Cost Analysis (if required) are attached.

Signature

Date

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>				
D. OTHER				
<i>TOTAL OTHER</i>				
<i>E. SUBTOTAL DIRECT COST AND OVERHEAD</i>				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. <i>SUBTOTAL ESTIMATED COST</i>				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. <i>SUBTOTAL ESTIMATED COST</i>				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used . If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available.

5. OTHER DIRECT COSTS

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged.

Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

Appendix G: Piggybacking Checklist

Piggybacking Checklist

Definition: *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.*

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14) (i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See BPPM Section 9.2.1.		

Appendix I: Evaluation Form

Proposal Evaluation Form

RFP#:	Vendor:
Evaluator:	Date:

Criteria	Weight		Rating		Score
1. Qualifications of Proposed Firm	10	x		=	
2. Qualifications of Proposed Staff	10	x		=	
3. Past Performance	20	x		=	
4. Price	30	x		=	
5. Implementation Plan	10	x		=	
6. Proposed Timeline	10	x		=	
7. Evaluation of Options	10	x		=	
Total	100%				

Appendix J: Federal Clause Matrix

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS
(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/ A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All > \$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	

Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	

TYPE OF PROCUREMENT					
PROVISION	Professional Services/ A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.

Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.
Veteran's Preference				All	
Prompt Payment	All	All	All	All	All

Appendix K: Procurement File Checklist

RFP#	Vendor:
Requisitioner:	Contract Award Date:
Item/Project:	PO #:

Document		√ or NA	Document		√ or NA
1.	PROCUREMENT REQUEST		16.	NEGOTIATION	
2.	INDEPENDENTCOSTESTIMATE		17.	SOURCE SELECTION REPORT AND RELATED DOCS	
3.	STATEMENT OF WORK (SPECIFICATIONS)		18.	CONTRACTOR RESPONSIBILITY DETERMINATION	
4.	PROCUREMENT PLAN AND TIMELINE		19.	REQUIRED AWARD APPROVALS	
5.	SINGLE-SOURCE JUSTIFICATION		20.	NOTICE OF INTENT TO AWARD	
6.	MARKET RESEARCH DOCUMENTS		21.	PROTESTS	
7.	BIDDERS LIST		22.	SIGNED CONTRACT	
8.	SOURCE SELECTION PLAN AND DOCUMENTS		23.	CONTRACT MODIFICATIONS	
9.	SOLICITATION AND AMENDMENTS		24.	OPTION EXERCISES AND RELATED DOCUMENTS	
10.	PRE-SOLICITATION APPROVALS		25.	CONTRACT DATA AND REPORTS	
11.	ADVERTISEMENT		26.	DOCUMENTATION CONCERNING PRE- OR POST AWARD MISTAKES IN BID	
12.	PRE-BID OR PROPOSAL CONFERENCE NOTES AND QUESTIONS & ANSWERS		27.	COMPLAINT AND PERFORMANCE REPORTS	
13.	BIDS/PROPOSALS AND SOLICITATION AMENDMENT ACKNOWLEDGEMENTS		28.	INVOICES/ VOUCHERS	
14.	"NO BID" LETIERS OR OFFEROR DISQUALIFICATION CORRESPONDENCE		29.	GENERAL CONTRACT CORRESPONDENCE	
15.	COST OR PRICE ANALYSIS		30.	CONTRACT CLOSE-OUT	

Appendix L: Vendor Certifications

PRE-AWARD COMPLIANCE CERTIFICATIONS

(In compliance with the federal requirements of 49 U.S.C. section 5323(m))

PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION

As required by 49 CFR 663(b), the _____ (the recipient) is satisfied that the buses to be purchased, _____ (number and description of buses) from

_____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The _____ (the recipient) has reviewed the documentation provided by the manufacturer, which lists: (1) proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost as a percentage; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and cost of final assembly.

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by 49 CFR 663(b), the _____ (the recipient) certifies that the buses to be purchased, _____ (number and description of buses) from

_____ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by 49 CFR 663(d), the _____ (the recipient) certifies that it received, at the pre-award stage, a copy of _____ (the manufacturer's

self-certification information stating that the buses, _____ (number and description of buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR 571.

Name of Committee/Recipient

(Signature of Representative)

(Date of Signature)

(Type Representative)

POST-DELIVERY COMPLIANCE CERTIFICATIONS

(In compliance with the federal requirements of 49 U.S.C. section 5323(m))

POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION

As required by 49 CFR 663(c), the _____ (the recipient) certifies that _____ it is satisfied that the buses received, _____ (description of buses) from _____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The _____ (the recipient) has reviewed the documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the buses, including a description of the activities that took place at the final assembly point and the cost of final assembly.

POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION

As required by 49 CFR 663(d), the _____ (the recipient) certifies that it received, at the post-delivery stage, a copy of _____ (the manufacturer's) self-certification information stating that the buses, _____ (description of buses), comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR 571.

Name of Committee/Recipient

(Signature of Representative)

(Date of Signature)
Representative)

(Type or Print Name & Title of

Appendix M: Sample Contract

CONTRACT BETWEEN
First Tennessee Human Resource Agency AND
_____ , Inc.

This Contract, by and between the First Tennessee Human Resource Agency, hereinafter referred to as the FTHRA, and _____ hereinafter referred to as Contractor.

WITNESSETH: In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

A). The Contractor agrees to perform the following services:

B). The FTHRA agrees to compensate the Contractor as follows:

1).

	Hours	Cost	Total
Phase 0- Initiate	3	\$125	\$375
Phase 1- Design	8	\$125	\$1,000
Phase 2- Build	5	\$125	\$625
Phase 3- Educate	4	\$125	\$500
Phase 4- Depoly	9	\$125	\$1,125
Phase 5- System Acceptance	2	\$125	\$250
Project Management	8	\$125	\$1,000
Total	39	\$125	\$4,875

2). Payment in the full amount will be made upon completion of the project.

3). Payments to the Contractor shall be made according to the schedule set out above, but only after receipt of invoices for services performed. The final payment shall be made only after the contractor has completely performed his duties under this Contract.

4). In no event shall the liability of the FTHRA under this Contract exceed \$_____.

C). The parties further agree that the following shall be essential terms

and conditions of this Contract.

- 1). The Contractor warrants that no part of the total Contract amount provided herein shall be paid directly or indirectly to any officer or employee of the FTHRA as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-contractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- 2). No person on the grounds of handicap, race, color, religion, sex, or national origin, will be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract, or in the employment practices of the Contract.

The Contractor shall upon request show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

- 3). The Contractor, being an independent Contractor, and not an employee of the FTHRA, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incident hereunto. The FTHRA shall have no liability except as specifically provided in this Contract.
- 4). The term of this contract shall be from December 20, 2017 to January 20, 2018.
- 5). This Contract may be terminated by either party by giving written notice to the other, at least 15 days before the effective date of termination. In that event, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date.
- 6). If the Contractor fails to fulfill in timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the terms of this Contract, the FTHRA shall have the right to immediately terminate this Contract and withhold payments in excess of fair compensation for work completed.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- 7). This Contract may be modified only by written amendment executed by all parties hereto.
- 8). The Contractor shall maintain documentation for all charges against the FTHRA 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 in conformity with generally accepted accounting principles for a period of three 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 FTHRA or the Comptroller of the Treasury, or their duly appointed representatives, or a licensed independent public accountant. In the case of a multi-funded grantee, the records shall be maintained at no less than those recommended in the Uniform Accounting Manual for Development Districts of Tennessee, published by the Comptroller of the Treasury, State of Tennessee.

- 9). The Contractor shall not assign this Contract or enter into sub-contracts for any of the work described herein without obtaining the prior written approval of the FTHRA.
- 10). The Contractor shall coordinate weekly progress meetings with the FTHRA.

NOTE: Additional specific clauses are required by Rule II-E-(2) where

- a) The Contract represents a grant and allows reimbursement for the cost of procurement of goods, materials or services
- b) The Contract is supported by federal funds

Federal and FTA Clauses

No Government Obligation to Third Parties

- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

49 U.S.C. 5323(l)(1)

- (a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT

regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any claim, statement, submission, certification, assurance or representation it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that, in accordance with 49 U.S.C. 5323(1)(1), if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject the provisions.

Access to Third Party Contract Records

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

(a) Access to Third Party Contract Records - The following access to records requirements apply to this Contract and Sub-Contracts issued pursuant to this Contract:

(i) Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(ii) Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(iii) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(iv) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Changes to Federal Requirements

49 CFR Part 18

Contractor shall at all times comply with all applicable Federal laws, regulations and guidance, in addition to FTA regulations, policies, procedures and directives,

including without limitation those listed directly or by reference in the mater agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

The Changes to Federal Requirements flows down to subcontracts, issued pursuant to this contract, appropriately to each applicable changed requirement.

Civil Rights Requirements

29 U.S.C. § 621-624, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

49 CFR Part 21

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, U.S. DOT regulations 49 C.F.R. Part 21, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Religion, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 621-634 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disadvantaged Business Enterprises

49 CFR Part 26

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation for the current Federal Fiscal Year is 1%. A separate contract goal has not been established for this procurement.

(b) The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

(c) The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d) The contractor is required to pay its subcontractors performing work related to this contract (**regardless of whether or not the subcontractor is a DBE**) for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Agency.

- Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Agency. .
- The Agency requires the contractor to submit a completed "Prompt Payment Certification" to First Tennessee Human Resource Agency no later than 30 days after the contractor's receipt of payment from The Agency, as verification of the contractor's payment to its subcontractors for work related to this contract.

In addition, the contractor may not hold retainage from its subcontractors.

This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration Terms

49 U.S.C. Chapter 53

**49 C.F.R. 18.36 or 49 C.F.R. 19.40 – 19.48
FTA Circular “Third Party Contracting Guidance”**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular “Third Party Contracting Guidance,” 49 U.S.C. chapter 53, and 49 C.F.R. 18.36 or 49 C.F.R. 19.40 – 19.48, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of the Agency’s requests which would cause the Agency to be in violation of the FTA terms and conditions.

The Contractor also agrees to include any applicable requirements in each subcontract issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA.

Resolution of Disputes, Breaches or Other Litigation

49 CFR Part 18

FTA Circular “Third Party Contracting Guidance”

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Agency’s Transportation Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Transportation Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transportation Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after

the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

The Contractor also agrees to include these requirements in each subcontract issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA, in which the prime contract exceeds \$100,000.

Fly America Requirements

49 U.S.C. § 40118

41 CFR Part 301-10

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10.131 – 301-10.143, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Energy Conservation Requirements

42 U.S.C. 6321 et seq.
49 CFR Part 18

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

The Contractor also agrees to include any applicable requirements in each subcontract, issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA.

ADA Access- Materials and Supplies

42 U.S.C. Chapter 126, Sections 12101 et seq.

Contractor shall meet all applicable requirements of the Americans with Disabilities Act of 1990, as amended, in fulfilling this contract.

The contractor also agrees to include any applicable requirements in each subcontract issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA.

Conformance with National ITS Architecture

23 U.S.C. § 517(d)

66 FR 1455

The Contractor agrees that:

- A.)** As provided in subsection 23 U.S.C. § 517(d), as amended by MAP-21, apart from certain exceptions, “intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [shall] conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a) or (c).” To facilitate compliance with subsection 23 U.S.C. § 517(d), as amended by MAP-21, the contractor assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing; and
- B.)** With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Contractor assures that it will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.
- C.)** The Contractor also agrees to include any applicable requirements in each subcontract, issued pursuant to this contract, financed in whole or in part with Federal assistance provided by FTA.

As used in this clause, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the “National ITS Architecture.”

Prompt Payment to Subcontractors

- 1) The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than five (5) business days after the Contractor has received payment from the Authority. ⁷
- 2) In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than fourteen (14) business days after the Subcontractor has, in the opinion of the VP Construction, satisfactorily completed its portion of the Work. ⁸
- 3) A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the General Manager, Purchasing.
- 4) The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
- 5) The Authority will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the Authority of lien waivers, canceled checks (if requested), and the Contractor’s sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit, (form to be provided by the Authority) which identifies each subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such subcontractor, with every payment request filed with the Authority, except for the first payment request, on every contract with the Authority. (See below for *Prompt Payment Affidavit* developed by CTA).
- 6) Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment. In addition, Contractor’s failure to promptly pay its Subcontractors is subject to the provisions of 50 ILCS 505/9.

First Tennessee Human Resource Agency

BY:

Signature

Date

Jason Cody, Executive Director

_____, Inc.

BY:

Signature

Date

Printed name and title

CERTIFICATION RELATED ITEMS (CMRA) REPORT

October 2021

RE-CERTIFICATION

1. Item No. 763.A180
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation, Buildings A,C,E, 6630 Centennial Blvd., Nashville, Tennessee.
Annual Price: \$6,962.76, Building A \$2,320.92 Annual Price \$193.41 per month or \$2.3025 per square foot for a total of 1,008 square feet. Building C \$2,320.92 Annual Price \$193.41 per month or \$2.3025 per square foot for a total of 1,008 square feet. Building E \$2,320.92 Annual Price \$193.41 per month or \$2.3025 per square foot for a total of 1,008 square feet.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 11/01/2021 – 10/31/2022

2. Item No. 763.38c,d
Service: SWC 923 Snap Out and Continuous Forms
Agency/Location: Department of General Services, Central Procurement Office, 312 Rosa L. Parks Ave, Nashville, Tennessee.
Annual Price: Current Spend \$539,252.88 (October 2020-October 2021)
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 11/01/2021 – 10/31/2022

ADDENDUM

3. Item No. 763.54
Service: Janitorial Services
Agency/Location: TDOT Region 3 Office Complex, Nashville TN.
Annual Price: \$229,634.16, or \$19,136.18 per month, or \$2.14 per square foot per year.
Square footage is 107,412.
No price increase requested. The addendum is to change vendors to Excel Cleaning Services.
Satisfaction: No complaints have been filed.
Addendum will have an effective date of 11/1/2021 and run until the end of the contract term on 3/31/2022.

4. Item No. 763.A208
Service: Ground Maintenance
Agency/Location: Department of Human Services, Tennessee Rehabilitation Center, 91 Volunteer Parkway, Manchester, Tennessee
Annual Price: \$3,625.20, or \$201.40 per cycle, approximately 18 cycles for approximately 1.5 acres.
Price increase requested due to additional mowing cycles. The price per cycle decreases.
Satisfaction: No complaints have been filed.
Addendum will have an effective date of 11/1/2021 and run until the end of the contract term on 7/31/2022.

5. Item No. 763.A196
Service: TDOC Uniforms
Annual Price: Maximum Liability of 1,800,000.00. Price will vary based on which item or items are purchased from the contract. Annual Price: Current Spend \$ 16,658.40 (October 1, 2021-October 14, 2021).
No price increase requested. The addendum adds more options for polo shirts for Correction personnel. The addendum also makes corrections to make all prices accurate and consistent to allow for proper payment.
Satisfaction: No complaints have been filed.
Addendum will have an effective date of 11/1/2021 and run until the end of the contract on 9/30/2022.

November 2021

RE-CERTIFICATION

1. Item No. 763.63
Service: Janitorial Services
Agency/Location: AFRC, 117th RTI, Bldg. 686, Smyrna, Tennessee.
Annual Price: \$82,962.12 for Janitorial Services. Janitorial Services are \$6,913.51 per month or \$0.9732 per square foot. The facility has approximately 85,245 square feet.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2021-11/30/2022

2. Item No. 763.A189
Service: Grounds Maintenance Services
Agency/Location: TDOT Region 4 Boswell Complex, 5334 & 5536 Boswell Ave., Memphis, Tennessee.
Annual Price: \$8,760.96 or \$243.36 per month for all services, or \$102.60 per month for mowing and trimming, \$54.10 per month for weed eating, \$55.41 for edging, and \$31.25 for trash removal. The facility has approximately 1.275 acres.
Price increase requested. CMRA requested a 25% price increase to provide employees a livable wage. There has been no price increase since 2008.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2021-11/30/2022.

3. Item No. 763.A183
Service: Janitorial Services
Agency/Location: TDOT Region 4 Boswell Complex, 5334 & 5536 Boswell Ave., Memphis, Tennessee.
Annual Price: \$42,483.48 for the Regional Transportation Management Center, the Engineering Building, and the Help Building. Janitorial Services at the Regional Transportation Management Center are \$2,270.76 per month, \$27,249.12 annually, \$2.08 per sq.ft., for 13,118 sq. ft. Janitorial Services at the Engineering Building are \$872.24 per month, \$10,466.88 annually, \$1.22 per sq.ft., for 8,566 sq. ft. Janitorial Services at the Help Building are \$397.29 per month, \$4,767.48 annually, \$ 3.72 per sq.ft., for 1,280 sq. ft.
Price increase requested. CMRA requested a 25% price increase to provide employees a livable wage. There has been no price increase since 2008.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2021-11/30/2022.

4. Item No. 763.A197
Service: Offender Release Jackets
Agency/Location: Axis7, 40 Rutledge St., Nashville, Tennessee.
Annual Price: Current Spend: \$12,271.47 (December 2020-November 2021).
Price increase requested as result of increases in materials, labor, and shipping costs due in-part to Covid-19 challenges.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 12/01/2021-11/30/2022.

ADDENDUM

5. Item No. 763.20
Service: Rest Area Maintenance
Agency/Location: TDOT Rest Areas in Various Counties in Tennessee.
Annual Price: \$4,820,109.26
No Price increase requested. This addendum is to change subcontractors from Goodwill-Knoxville to ABM Industry Groups in the Jefferson County and McMinn County Rest Area Locations (5 total).
Satisfaction: No complaints have been filed.
Addendum will have an effective date of 12/1/2021 and run until the end of the contract on 6/30/2022.

December 2021

RE-CERTIFICATION

6. Item No. 763.A164
Service: Janitorial Services
Agency/Location: Tennessee Emergency Management Agency, 1510 R.E. Bailey Bypass, Jackson, Tennessee.
Annual Price: \$11,755.19, or \$979.60 per month or \$1.81 per square foot. The facility has approximately 6,478 square feet.
Price increase requested. This price increase is being requested due to the increase in costs for supplies and equipment.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 1/01/2022-12/31/2022.

7. Item No. 763.A178
Service: Grounds Janitorial Services
Agency/Location: Tennessee Highway Patrol, Truck Inspection Site, I-65 North, Portland, Tennessee.
Annual Price: \$7,219.32 or \$601.61 per month, or \$4.81 per square foot. The facility has approximately 1,500 square feet.
Price increase requested. This price increase is being requested due to the increase in costs for supplies and equipment.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 1/01/2022-12/31/2022.

8. Item No. 763.A193
Service: Janitorial Services
Agency/Location: Department of Transportation, Gallatin Shop, 1215 Hartsville Pike, Gallatin, Tennessee.
Annual Price: \$6,852.60 or \$571.05 per month, or \$4.60 per square foot. The facility has approximately 1,490 square feet.
Price increase requested. This price increase is being requested due to the increase in costs for supplies and equipment.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 1/01/2022-12/31/2022.

ADDENDUM

9. Item No. 763.18a
Service: Janitorial Services
Agency/Location: Tennessee Air National Guard, Nashville International Airport, Nashville, Tennessee.
Annual Price: \$94,968.44, or \$13,015.01 per month in January, April, July and October and \$5,363.55 per month in February, March, May, June, August, September, November and December.
Price increase requested. This is due to additional square footage as a result of renovations to the facility.
Satisfaction: No complaints have been filed.
Addendum will have an effective date of 1/1/2022 and run until the end of the contract on 9/30/2022.

LIMITATION OF LIABILITIES REPORT

Number	Form	Subject	Description	Status	Date Submitted	Owner	Date Approved
6743	LOL_REQ	31865-00828 TennCare TALX Sole Source LOL Request	Through CPO negotiations conducted with TALX Corporation, under the current TALX Contract # 69010, and with the assistance of TennCare Legal, it was agreed that the Contractor would not 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 under the Contract. TALX is the only know provider of these types of services. This Contract modification was in accordance withTenn. Code Ann. § 12-3-701, at two (2) times the maximum liability. The risk also decreases due to the twelve (12) month term within the Contract. This Contract modification represents the Contractor's interest in risk management practices and the State's Limitation of Liability. This modification will also permit TennCare to satisfy CMS/Federal requirements associated to employment and income verification services.	A	10/12/2021 12:39	James Brimm	10/12/2021 15:35
6880	LOL_REQ	Amerisource- Vaccine Redistribution	This Contractor, Amerisource Bergen, was engaged to provide Vaccine Redistribution Services for the Covid-19 Vaccine. This Contract permitted allow private providers to administer Covid-19 Vaccines in house thus making it easier for more convenient for people to have access to the COVID-19 Vaccine. It was agreed that the limitation of liability provision would be modified to an amount equal to the actual amounts paid by the State to the Contractor and subject to Tenn. Code Ann. § 12-3-701. . This Contract modification recognized that the State would only be liable for funds that were paid to the Contractor by the State and since the Contract was for only a twelve month term, was in the best interest of the State and would pose no appreciable risk.	A	11/9/2021 9:57	Tara Roark	11/9/2021 11:44
6921	LOL_REQ	34501-12722 TALX Limitation Liabiltiy Request	During the negotiation process between the State and the Contractor, TALX Corporation, it was agreed that the Contractor would not be liable for any consequential damages, whether based on warranty, contract, statute, regulation, tort or other legal theories, under the negotiated contract and in conjunction with Tenn. Code Ann. § 12-3-701. While these types of damages for losses related to goodwill and production costs are common in the private sector, as a government entity these types of damages are extraordinary. This contract modification exculpates the Contractor from liability for second or third tier damages that the State could suffer due to the Contractor's breach of contract. The Contractor agreed to provide specific insurance coverage types and amounts to further protect the State's interest. The language agreed to during negotiations was consistent with the language in the TALX Employment and Income Verification Contract # 67165, was representative of the Contractor's recognition of sound principles of risk management.	A	11/29/2021 7:59	Rebecca Parker	11/29/2021 8:13
6955	LOL_REQ	CAQH LOL Request	The Contractor, CAQH, during Contract negotiationswith TennCare requested that the limitation of liability provision be changed to two times the maximum liability amount of \$717,876, and in accordance with Tenn. Code Ann. § 12-3-701. The Contractor is the only provider of VeriFide Primary Source Verification services in the marketplace. This change was necessary for TennCare to procure these services that will allow the agency to satisfy centralized and standardized credentials verification process. The risk associated with this extremely low since the Contractor must abide with § 12-3-701 and the term of the Contract is for twelve months.	A	12/6/2021 15:20	Donovan G Morgan	12/6/2021 15:43
7042	LOL_REQ	40100-47600 Aspen Aerial	The Contractor, Aspen Aerial, Inc., provides bridge inspection services. The Contract is for a term of twelve months and in the amount of \$710,000. The Contractor is the only provider of this type service. The Contractor's aerial equipment is used for the inspection and repair of bridges in the State. The Contractor requested that the State accept its warranty agreement form in response to the warranty bid factor. During negotiations, it was determined that it was in the best interest of the State to accept the warranty terms in connection with the limitation of liability as set forth in Tenn. Code Ann. § 12-3-701. The Contractor does not utilize a dealer network to sell, train, or recertify their equipment. The Units are manufactured with American National Standards Institute (ANSI). The vendor attached their warranty form in response to the warrant bid factor which was accepted during negotiations. This request was necessitated by the fact that that the inspection of bridges was necessary to maintain the safety of the public utilizing roadways and was critical for TDOT in its bridge inspection, repair and safety management.	A	1/5/2022 10:36	Richard Bennett	1/5/2022 11:43

MEMORANDUM OF UNDERSTANDING (MOU) REPORT

Number	SWC# / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
343	37896	Managed Service Provider (MSP)	Maya Carpenter	Knowledge Services	Temporary and Contract Staff Augmentation	10/15/2021	Added Physician III, Optometrist, and Audiologist to the rate card.
344	56900	Checkpoint and Body Scanners	DeRenne Raley	Ceia USA	Checkpoint and Body Scanners	10/25/2021	added 2 lines from discontinued Metrasens contract
345	37896	Managed Service Provider (MSP)	Maya Carpenter	Knowledge Services	Temporary and Contract Staff Augmentation	12/3/2021	Added TEMA Training Course Instructor - Introduction to Air Operations and TEMA Training Course Instructor - Air Support Group Supervisor to the rate card.
346	37896	Managed Service Provider (MSP)	Maya Carpenter	Knowledge Services	Temporary and Contract Staff Augmentation	12/3/2021	Added Fitness for Duty - Physician/Registered Nurse Practitioner File Review to the rate card.
347	72874	TEMA Uniforms	Sharon Pope	CMS Uniforms and Equipmnet	Uniforms	12/29/2021	Addition of shirts, windbreaker
348	72318	Vehicles	Mike Neely	Lonnie Cobb	Vehicle	1/6/2022	Ford F150 Lightning
349	72370	Vehicles	Mike Neely	Alan Jay Automotive	Vehicle	1/6/2022	Ford F150 Lightning