

STATE OF TENNESSEE
PROCUREMENT COMMISSION
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- AGENDA -
PROCUREMENT COMMISSION MEETING #042
TUESDAY, OCTOBER 25, 2022
1:00 P.M. – 2:00 P.M.
NASHVILLE ROOM AND WEBEX

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V. New Business:	
Proposed changes to the following Central Procurement Office documents (see attached documentation):	
(1) Proof of Financial Responsibility – RFP Template.....	18
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(3) Procurement Procedures Manual of the CPO, § 7. Managing The Relationship with the Contracting Party.....	30
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(1) Review of CPO Rules (Chapter 0690-03-01), pursuant to Tenn. Code Ann. § 4-5-213, upcoming in 2023.....	--
(2) Consent to Cancel November 10, 2022 and December 15, 2022, Procurement Commission Meeting – next meeting would be January 19, 2023.....	--
VII. Adjournment	--

**MINUTES OF JUNE 16, 2022
MEETING**

MINUTES
PROCUREMENT COMMISSION MEETING #041
THURSDAY, June 16, 2022, 9:00 a.m.
Nashville Room/WEBEX

Members in Attendance:

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

Others in Attendance:

Paul Krivacka, Sherry Whitby, Bryan Chriske, Buddy Lea, Davis Nwankwo, Travis Ayers

WebEx Attendance:

Randy Dean, Christy Allen, Chadwick Nottingham, Debi Moss, Jennifer Young, Karen Conway, Nick Edwards, Terry Mason, Robin Upchurch, Candace Tate, Jessica Starling, Kelly Johns

I. Call to Order:

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

II. Minutes from the January 20, 2022, Meeting:

Commissioner Branscom presented the January 20, 2022, minutes for approval. Comptroller Mumpower moved adoption of January 20, 2022, Procurement Commission meeting minutes as presented. Commissioner Bryson seconded the motion. All members voted in favor – none opposed, whereupon the minutes were approved.

III. Announcements: Commissioner Branscom welcomed new committee member, Jim Bryson, Commissioner of Finance and Administration to the Procurement Commission.

IV. Consent Agenda Items.

Commissioner Branscom presented the Consent Agenda items (1) through (8) for

approval. Mr. Krivacka stated that items (1) through (8) are being presented 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 (8). Commissioner Bryson seconded the motion. All members voted in favor – none opposed; whereupon Consent Agenda items (1) through (8) were approved.

V. New Business:

Mr. Krivacka presented the following New Business agenda items:

Mr. Krivacka noted that there were (7) New Business items.

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

(1) Advance Payments Rule Exception Request ("RER")

Mr. Krivacka summarized the following points regarding the Advance Payments Rule Exception Request ("RER") proposal:

- This proposal will add additional parameters for when procurement professionals are required to complete and submit the RER- Advance Payments form for approval.
- If using "Advance Payment" as the payment methodology, then procurement professionals are required to complete and submit an RER if extending the term OR increasing the funding amounts (after the fact) in addition to those times when they are including an advance payment provision.

Seeing no discussion on agenda items (1), Comptroller Mumpower made a motion to approve the Advance Payments Rule Exception Request ("RER") 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) Endowment Grant

Mr. Krivacka summarized the following points regarding the Endowment Grant:

- This proposal will clarify and make a distinction between a direct appropriation grant vs. an endowment grant.
- The language in the red font was recommended by F&A representatives to clarify misconceptions or ambiguity surrounding use of the endowment grant

template.

- If the appropriation is not awarded in the appropriations bill and does not appear in F&A's Division of Budget's annual direct appropriation list, then agencies should be using either an Endowment Grant ("GE"), Governmental Grant ("GG") or Grant Contract ("GR") template if the public is the beneficiary.

Seeing no discussion on item (2), Comptroller Mumpower made a motion to approve the Endowment Grant as presented. The motion was seconded by Commissioner Bryson. All members voted in favor – none opposed.

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

(3) Contract Amendment Template

Mr. Krivacka presented the following point regarding the Contract Amendment Template proposal:

- This proposal switches the template default Amendment Effective Date language and replaces it with the optional Amendment Effective Date language.
- Under CPO rules, policies, and procedures, no contract or amendment is effective until it has been duly authorized by all required approvers. This means that the earliest a contract or an amendment can be effective is the day on which the last approval has been obtained.
- In instances where the State Agency would prefer to have a specific amendment Effective Date, they will still be able to utilize the (now) optional text.

Seeing no discussion on agenda items (3) Comptroller Mumpower made a motion to Contract Amendment Template as presented. The motion was seconded by Commissioner Bryson. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda items (4):

(4) Emergency Purchases Request Report (NEW)

Mr. Krivacka presented the following point regarding the Emergency Purchases Request Report (NEW) proposal:

- This proposal will add a new Edison E-form to document emergency requests and the CPO's approval of the same.
- The use of the Edison E-Form tool will also assist the CPO with meeting any statutory or FRC reporting requirements.

Seeing no discussion on agenda items (4) Comptroller Mumpower made a motion to

Emergency Purchases Request Report (NEW) as presented. The motion was seconded by Commissioner Bryson. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda items (5):

(5) Request for Qualifications

Mr. Krivacka presented the following point regarding the Request for Qualifications proposal:

- This proposal will make several changes to the RFQ Template, including the following highlights:
 - Removal of references to Cost being evaluated (generally, if Cost is going to be evaluated, then procurement professionals should use an RFP or other procurement method);
 - Removal of references to receiving Cost Proposals from only Qualified Respondents – the State will receive Technical Proposals and any requested cost information at one Response deadline; and,
 - Removal of B.17. References to match recent changes to the RFP Template.

Seeing no discussion on agenda items (5) Comptroller Mumpower made a motion to Request for Qualifications as presented. The motion was seconded by Commissioner Bryson. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda items (6):

(6) Policy Number 2015-010, Statewide Payment Card Policy and Procedures (NEW)

Mr. Krivacka presented the following point regarding the Policy Number 2015-010, Statewide Payment Card Policy and Procedures (NEW) proposal:

- This proposal is recommended by the P-Card Team to address several questions they received regarding delivery of P-Cards.
- This request will add a new subsection 6.2. "P-Card Delivery and Distribution" and explain that the RER process should be followed in the event direct delivery to Cardholders is requested.

Comptroller Mumpower asked Mr. Krivacka to give an example of a scenario where this would be needed. Mr. Krivacka responded if a TWRA agent stationed in a remote area of TN needed a P-card, he or she would be able to obtain one without going through that agency's fiscal agent. Comptroller Mumpower also asked what protocols were in place monitor this activity. Mr. Krivacka replied that an RER would have to be submitted and approved thereby creating a paper trail, and the agent would have to be held to the responsibilities of P-card use under the P-card Policy.

Seeing no further discussion on agenda items (6) Comptroller Mumpower made a motion to Policy Number 2015-010, Statewide Payment Card Policy and Procedures (NEW) as presented. The motion was seconded by Commissioner Bryson. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda items (7):

(7) Boycott of Israel (NEW)

Mr. Krivacka presented the following point regarding the Boycott of Israel (NEW) proposal:

- This proposal adds a new mandatory term and condition to the configurator and the FA Template pursuant to Public Chapter Number 775.
- The new term includes a certification that the company is not currently engaged in and will not for the duration of the contract engage in, a boycott of Israel.
- The new law does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars or to contractors with less than ten employees.

Seeing no discussion on agenda item (7) Comptroller Mumpower made a motion to Boycott Israel (NEW) as presented. The motion was seconded by Commissioner Bryson. All members voted in favor – none opposed.

VI. 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)

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

VII. Other Business:

Consent to Cancel the July 21, 2022, Procurement Commission Meeting:

Comptroller Mumpower, Commissioner Branscom, and Commissioner Bryson gave their verbal consent to cancel the July 21, 2022, Procurement Commission meeting. The next meeting will be on August 18, 2022. A motion was made by Comptroller Mumpower and was seconded by Commissioner Bryson. All members voted in favor – none opposed.

VIII. 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 the June 16, 2022, Procurement Commission meeting was adjourned.

PROCUREMENT COMMISSION AGENDA ITEMS OVERVIEW

Overview of Agenda Items:

Consent Agenda Items:

1. Assistance Listing Number (formerly known as the CFDA number)

- This request is a clean-up to update a few references from “CFDA Number” to “Assistance Listing Number” in both an optional term utilized by Department of Health and the FA and GU coversheets.

2. Emergency Purchases E-Form Update

- This request adds a few additional fields to the Emergency Purchases E-Form.
- These changes will assist the Central Procurement Office with reporting requirements and will address the scenario if amending or supplementing an already approved Emergency Purchase Request Authorization EFORM.

New Business Agenda Items:

1. Proof of Financial Responsibility – RFP Template

- Agenda Items #1 and #2 are both regarding the financial responsibility related question options asked during the solicitation process. This change will synchronize both templates so the same options are available for use in both the RFP and RFQ Templates.
- Changes include changing the bank reference question indicating that the relationship with the respondent is in a positive standing, to maintaining a “satisfactory” business relationship. This request has been requested recently by banks.
- Also, this request updates the Credit Bureau Report option to a more broad “Financial Documentation” to permit private companies to supply documentation that may not be readily available through a credit bureau due to their status, but shows their financial stability.

2. Proof of Financial Responsibility –RFQ Template

- Updating the RFQ Attachment A options to be consistent with the changes to the RFP Template questions regarding Financial Responsibility, as detailed in New Business Agenda Item #1.

3. Procurement Procedures Manual of the CPO, § 7. Managing the Relationship with the Contracting Party.

- This request adds guidance for circumstances where a procurement professional includes a scorecard to evaluate the Contracting Party’s performance as an optional contract management tool.

4. Contractor Scorecard Template – NEW

- This request adds new template language for circumstances where Procurement Professionals will utilize a Contractor Scorecard. The intent is that the contract term, to be included at Contract Section A.#. Scope, will be standardized.

- Also included as part of the new Contract Scorecard Template is a new Contractor Scorecard Template Metrics, Attachment. The intent is that the metrics attachment will be able to be modified as needed to meet the specific requirements and performance metrics particular to the Contract.

5. Publication 1075 Attachment (update)

- This request is to assist State Agencies with compliance with the updated IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies: (<https://www.irs.gov/pub/irs-pdf/p1075.pdf>).
- In particular, this request is to update the specific contract language included as an Attachment in the FA Template to comply with the model language of Exhibit 7 of IRS Publication 1075 (Rev. 11-2021).

**ASSISTANCE LISTING NUMBER
(FORMERLY KNOWN AS THE CFDA
NUMBER)**

CONSENT AGENDA

REQUEST: Revise the following CFDA Number References:

Department of Health, GR and GG Templates:

E. #. Assistance Listing Number. When applicable, the Grantee shall inform its licensed independent public accountant of the federal regulations that require compliance with the performance of an audit. This information shall consist of the following Assistance Listing Numbers: (Insert specific Assistance Listing name(s) and number(s), formerly known as Catalog of Federal Domestic Assistance or CFDA).

FA and GU Coversheets:

Assistance Listing Number

**EMERGENCY PURCHASES E-FORM
UPDATE**

CONSENT AGENDA

Emergency Purchase Authorization Request

Use this document to request approval for an Emergency Purchase from the Chief Procurement Officer. Note: this Request is not required when TEMA is the procuring State Agency. All information required on this Request Document should be entered and routed for approval in Edison. For additional guidance, please see the EFORMS Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

An Emergency Purchase may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment. Please refer to the [Procurement Procedures Manual of the Central Procurement Office](#) for more details.

An approved Emergency Purchase Authorization Request must be uploaded to any Contract or Purchase Order executed pursuant to this approval. Any Purchase Order resulting from this request should be coded as PEP.

Agency request tracking # (as applicable)	
1. Procuring Agency	
2. Edison contract ID # or Purchase Order # Note: If this Request is amending or supplementing a previously approved EFORM, please also include that Emergency Purchase Request EFORM # for reference.	
3. Edison Vendor Identification #	
4. Scope of Goods or Services Caption:	
5. Contractor Name:	
6. Contract's Effective Date:	
7. Contract Term:	Months
8. Contract's Maximum or Estimated Liability:	\$
9. Describe in detail the circumstances leading to this emergency procurement:	
10. Describe the procurement related actions that have been taken in response to the emergency. Include the procurement methods used.	

11. Describe due diligence the agency performed to ensure the State received the best pricing and terms and conditions available in the marketplace under the circumstances (e.g., number of vendors contacted, etc.). Add attachments as needed.

12. Provide a complete list of goods or services, including price and total purchase amount:

13. Provide information related to the total funding for the emergency purchase agreement and funding source.

14. Are any additional purchases expected? If yes, include the expected price and total purchase amounts as applicable.

Signature of Agency head or designee and date

[Either upload signed RER to e-Forms in Edison or capture authorized agency approval in Edison Workflow]

PROOF OF FINANCIAL RESPONSIBILITY – RFP TEMPLATE

REQUEST: Revise the RFP Instructions, Considerations, and Options as follows:

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 maintains a satisfactory business relationship with the financial institution. 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: Financial Documentation

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.#.	<p>Provide at least one of the following financial documents dated within the last three (3) months: (1) an official document or letter from an accredited credit bureau, 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.); (2) income statement, indicating the Respondent’s financial operations; or (3) balance sheet, showing the Respondent’s flow of funds.</p> <p>Any documentation disclosing the amount of cash flows from operating activities should be for the Respondent’s most current operating period and must indicate whether the cash flows are positive or negative. If the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</p> <p>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent’s financial status <u>must</u> be properly licensed to render</p>
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		such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.
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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, 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.)

	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: (a) Name of the Insurance Company (b) Respondent’s Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverages: (i) Workers’ Compensation/ Employers’ Liability with a limit not less than the relevant statutory amount or	
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		<p>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.

	A.#.	<p>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> <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>	
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	<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**.

Option: Audited Financial Statements – Additional Requirement.

Add the following sentence at the end of the second bulleted note in the optional audited financial statements requirement text **ONLY IF** the contracting agency legal counsel recommends it in writing.

Any attest or review of the financial status of a Tennessee corporation must be rendered by an accountant or accounting firm licensed or otherwise specifically permitted to provide an attest or review by the Tennessee Board of Accountancy.

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: Proposal Bond Confirmation.

Add the following row to the RFP Attachment 6.2, Section A ONLY IF a Proposal Bond is required by the Chief Procurement Officer. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract.

	A.#.	Provide a proposal bond issued by a surety company licensed to do business in the State of Tennessee in the amount of \$____.	
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Option: Additional Mandatory Requirements.

Typically, each mandatory requirement item must be drafted such that an objective “yes/no” determination of whether the requirement was met is reasonable and adequate (clearly not necessitating a qualitative evaluation of the response).

Contracting agency staff may be asked to provide evidence that a proposed mandatory requirement is not inappropriately arbitrary or capricious (e.g., (1) information from an independent, authoritative source indicating that the proposed criteria is a reasonable standard; (2) a recommendation signed by the contracting agency legal counsel explaining why the proposed requirement is not arbitrary or capricious); or other evidence that a proposed mandatory requirement is rationally related to the procurement goals).

Add mandatory requirement items to the RFP Attachment A table (after the template items) as appropriate. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Do not include an arbitrary mandatory requirement. To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.

PROOF OF FINANCIAL RESPONSIBILITY – RFQ TEMPLATE

REQUEST: Revise the RFQ Instructions, Considerations, and Options as follows:

ATTACHMENT A: TECHNICAL RESPONSE & EVALUATION GUIDE

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 RFQ Attachment 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 RFQ Attachment 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 maintains a satisfactory business relationship with the financial institution. 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 RFQ Attachment 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: Financial Documentation

Add the following row to the RFQ Attachment 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.#.	<p>Provide at least one of the following financial documents dated within the last three (3) months: (1) an official document or letter from an accredited credit bureau, 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.); (2) income statement, indicating the Respondent’s financial operations; or (3) balance sheet, showing the Respondent’s flow of funds.</p> <p>Any documentation disclosing the amount of cash flows from operating activities should be for the Respondent’s most current operating period and must indicate whether the cash flows are positive or negative. If the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</p> <p>NOTICE: 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 of such</p>	
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		licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.
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Option: Credit Rating

Add the following row to the RFQ Attachment 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 RFQ.

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.

<p>OR, in lieu of the aforementioned credit rating, provide an official document or letter from an accredited credit bureau, 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.)</p>
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Option: Certificate of Insurance.

Add the following row to the RFQ Attachment 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 RFQ, the appropriate Insurance provision must be detailed in the *pro forma* contract. The insurance coverage requirements specified in both the RFQ and the *pro forma* contract must be the same.)

	A.#.	<p>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> <ul style="list-style-type: none"> (a) Name of the Insurance Company (b) Respondent’s Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverages: <ul style="list-style-type: none"> (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; 	
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		<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 RFQ Attachment 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.

	A.#.	<p>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> <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 RFQ.</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. 	
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	<ul style="list-style-type: none"> 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 RFQ 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**.

Option: Audited Financial Statements – Additional Requirement.

Add the following sentence at the end of the second bulleted note in the optional audited financial statements requirement text **ONLY IF** the contracting agency legal counsel recommends it in writing.

Any attest or review of the financial status of a Tennessee corporation must be rendered by an accountant or accounting firm licensed or otherwise specifically permitted to provide an attest or review by the Tennessee Board of Accountancy.

Contingent Requirement: Performance Bond Confirmation.

Add the following row to the RFQ Attachment A table **ONLY IF** a Performance Bond is proposed.

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

Add the following row to the RFQ Attachment A table ONLY IF a Proposal Bond is required by the Chief Procurement Officer. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract.

	A.#.	Provide a proposal bond issued by a surety company licensed to do business in the State of Tennessee in the amount of \$____.	
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Option: Additional Mandatory Requirements.

Typically, each mandatory requirement item must be drafted such that an objective “yes/no” determination of whether the requirement was met is reasonable and adequate (clearly not necessitating a qualitative evaluation of the response).

Contracting agency staff may be asked to provide evidence that a proposed mandatory requirement is not inappropriately arbitrary or capricious (e.g., (1) information from an independent, authoritative source indicating that the proposed criteria is a reasonable standard; (2) a recommendation signed by the contracting agency legal counsel explaining why the proposed requirement is not arbitrary or capricious); or other evidence that a proposed mandatory requirement is rationally related to the procurement goals).

Add mandatory requirement items to the RFQ Attachment A table (after the template items) as appropriate. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Do not include an arbitrary mandatory requirement. To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.

**PROCUREMENT PROCEDURES
MANUAL OF THE CPO, § 7. MANAGING
THE RELATIONSHIP WITH THE
CONTRACTING PARTY**

REQUEST: Revise section 7 of the Procurement Procedures Manual of the Central Procurement Office as follows:

7. Managing the Relationship with the Contracting Party.

Once a contract has been awarded and duly approved, a contractual relationship exists between the State and the awarded respondent. The procurement professional responsible for managing the contract should do all of the following:

- Maintain a detailed, written audit trail of all discussions and agreements.
- When documenting contracting party tasks, the operative phrase is “the contracting party shall.”
- Get a written commitment from contracting party team members, escalation, etc.
- Clearly define roles and responsibilities.
- The rules of engagement may include onsite attendance requirements if necessary, but if so, these requirements should be clearly communicated.
- Clearly define and communicate any implementation strategies.
- Reserve the right to review contracting party designs and request necessary changes.
- Request submittal of any project plans in advance for approval.
- Request submittal of test plans in advance for approval.
- Specify documentation required from the contracting party, including media and format.
- Specify support and maintenance to be provided the contracting party or the State.
- Prearrange change control processes and pricing to address scope creep.

Specify that any training provided by the contracting party, the cost of which is not included in the contract price, must be preapproved by the appropriate State official.

In some instances, the procurement professional may also be responsible for completing a scorecard to evaluate the Contracting Party's performance. Generally, inclusion of a scorecard may be approved when a solicitation is complex; involves a significant amount of State spend (e.g., over twenty million dollars (\$20,000,000)); or presents other unique risks that preponderate in favor of including a scorecard.

The Supplier Scorecard module in Edison may be utilized to help facilitate the scorecard evaluation process. Prior to beginning a scorecard evaluation in Edison for the first time, a Procurement Professional must submit an Edison security request to access the Supplier Scorecard module in Edison.

To avoid the inadvertent disclosure of confidential information, the Supplier Scorecard feature in Edison should not be utilized for Contracting Parties that have been identified as providing confidential contracts under the Tennessee Public Records Act (see Tenn. Code Ann. § 10-7-504(i) and the STS endorsement, when applicable).

If the Procurement Professional decides to utilize the scorecard, then the scorecard shall be utilized to measure the Contracting Party's performance against the requirements and obligations as specified in the Contract. The Procurement Professional submitting the evaluation should carefully review the Contract requirements; consult State Agency end users as needed; and have specified knowledge of the Contracting Party's performance.

The frequency of reviews should reflect State Agency resources and the State Agency's desired outcomes with respect to Contract Management. The frequency of reviews should be consistent with the contract term, calendared, and include adequate time set aside for evaluations.

Before submitting an evaluation, any commentary should be carefully reviewed by the evaluator's supervisor to ensure that all entries are proofread; accurate; and professional. Also, prior to entering an unsatisfactory evaluation or score, the Procurement Professional should have a CPO specialist to review and approve the score to ensure against bias, favoritism of the Contracting Party's competitors, personality conflicts or other matters not reflecting on the Contracting Party's performance.

After submitting an evaluation score, the Procurement Professional shall provide an opportunity to discuss scorecard evaluations with the Contracting Party. This will enable both parties to better understand expectations. This should also be used as an opportunity to remove misunderstandings of requirements and for the evaluator to offer feedback to the Contracting Party to improve the Contractor's performance relative to contract requirements. The Contracting Party debriefing should also provide the Contracting Party with an opportunity to

provide supplemental or rebuttal information that would cause the State to change or improve its score. All scoring should be fair, transparent, and timely. Evaluation results may be utilized as a Contract Management tool to determine whether or not the State will exercise any renewal or extension options under the Contract.

**CONTRACTOR SCORECARD
TEMPLATE (NEW)**

CONTRACTOR SCORECARD TEMPLATE

Under CPO Rules, the CPO is responsible for management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all contracts procured by the CPO on behalf of the State Agency or within their delegated authority. The scorecard's purpose is to aid in the contract management process by facilitating a uniform way to evaluate contractor performance. This template prescribes the format and content for contracts involving the incorporation of a contractor scorecard. A contractor scorecard is optional and may be appropriate in complex solicitations that involve a significant amount of State spend (e.g., over twenty million dollars (\$20,000,000) and longer than 12 months; or presents other unique risks that preponderate in favor of including a scorecard). To assist with maintaining confidentiality of Contractor's names, the Contractor Scorecard feature in Edison should not be utilized for Suppliers identified as providing confidential contracts under the Tennessee Public Records Act (see Tenn. Code Ann. §10-7-504(i)). For assistance with using the Edison Contractor Scorecard Module please visit: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>. Note any Deviations from this template require an approved Rule Exception Request.

Procurement professionals shall complete text 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 and add the following as a new Scope item in the *pro forma* Contract.

Contractor Scorecard

If the Contractor's performance will utilize the Contractor Scorecard, insert the following as a contract term, at section A.#. Scope, to put the Contractor on notice and to communicate expectations.

A.#. Contractor Scorecard. During the course of this Contract, Contractor performance may be measured against the desired outcomes utilizing the Contractor Scorecard metrics substantially similar to those included as Contract Attachment **[Insert Reference]**. The State will complete a Contractor Scorecard every **number (#)** months. The State will conduct a de-briefing with the Contractor to discuss scores and opportunity to improve scores. In the event the Contractor receives a score of **AMOUNT (#)** or less, the Contractor may submit additional information for the State's reconsideration of the evaluation or request an opportunity to discuss the evaluation with the Contract Administrator or his or her designee. Evaluation results may be utilized to determine whether or not the State will exercise any renewal or extension options under the Contract.

Contractor Scorecard Template Metrics, Attachment

Due to the unique nature of performance metrics essential to each Contract's success, modify metrics as needed to meet the specific requirements and performance metrics particular to the Contract. In general, all metrics should be able to be measured objectively. Customize one or more questions as needed.

Contractor Scorecard

Contractor Name:		
Completed By Name & Agency Role:		Date:
Evaluation Question:	Evaluation Score 0 = lowest (worst) - 5 = highest (best) or N/A	Comments: (Optional)
Compliance with Contract specifications: 1. Have the quality of goods or services provided by the Contractor met the State's expectations?		
Timeliness: 2. Were the goods or services provided by the Contractor delivered or provided on time?		
Customer Service: 3. Are phone calls and emails promptly returned?		
4. Is the Contractor knowledgeable about products or services and able to adequately address questions, concerns, or resolve issues?		
5. If there was a defect or other problem, did the Contractor remedy these issues within an acceptable time period?		
Documentation: 6. Are invoices submitted in a timely manner and correctly?		
7. Are any reports submitted timely, correctly, and as requested?		

**PUBLICATION 1075 ATTACHMENT
(UPDATE)**

REQUEST: Update the Protection of Federal Tax Information Attachment as follows:

Protection of Federal Tax Information

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

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

Please consult the most recent version of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies from the IRS Safeguards Program [website](#). Please see section 1.9.1. that provides “Disclosure of FTI is prohibited unless authorized by statute. Agencies with access to FTI are not allowed to make further disclosures of that information to their agents, contractor, or sub-contractor unless authorized by statute. See NIST Control AC-21, Information Sharing. Agencies must use specific language in their contractual agreements that clearly state the requirements necessary to protect the confidentiality of FTI and avoid ambivalence or ambiguity (see the model language of Exhibit 7). For additional requirements on contracts, see Exhibit 6, Contractor 45-Day Notification Procedures.”

ATTACHMENT REFERENCE

I. PERFORMANCE

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

- (1) All work will be performed under the supervision of the Contractor.
- (2) The Contractor and Contractor’s officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The Contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection or disclosure of FTI to anyone other than the Contractor or the Contractor’s officers or employees authorized is prohibited.

- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The Contractor will certify that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by the Contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the IRS.
- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this Contract apply to performing services with FTI, the Contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this Contract assumes toward the Contractor, and the subcontractor shall assume toward the Contractor all the same obligations, duties and responsibilities which the Contractor assumes toward the agency under this Contract.
- (11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this Contract apply to the subcontractor, and the subcontractor is bound and obligated to the Contractor hereunder by the same terms and conditions by which the Contractor is bound and obligated to the agency under this Contract.

(12) For purposes of this Contract, the term "Contractor" includes any officer or employee of the Contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The agency will have the right to void the Contract if the Contractor fails to meet the terms of FTI safeguards described herein.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(3) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

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

II. INSPECTION

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

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

TENNESSEE PROCUREMENT COMMISSION

BYLAWS AND RULES OF PROCEDURE

6/28/2012

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

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

AMENDMENT 3: ARTICLE V AMENDED ON 12/14/17

AMENDMENT 4: ARTICLE VI AMENDED ON 02/20/20

[AMENDMENT 5: ARTICLE IX AMENDED ON 10/25/22](#)

MISSION STATEMENT

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

ARTICLE I

NAME

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

ARTICLE II

DUTIES AND RESPONSIBILITIES

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

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

ARTICLE III

DOCUMENT GOVERNING PROCEEDINGS

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

ARTICLE IV

RECORD OF PROCEEDINGS

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

ARTICLE V

FILING

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

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

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

ARTICLE VI

MEMBERS OF THE PROCUREMENT COMMISSION

The members of the Procurement Commission shall consist of the commissioners of General Services, Finance and Administration, and the Comptroller of the Treasury. The Chief Procurement Officer shall serve as a non-voting member. On an annual basis, each member of the Commission shall be provided with a copy of the Conflict of Interest Policy, attached to these Bylaws at Exhibit A, and shall be required to complete and sign.

ARTICLE VII

OFFICERS

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

ARTICLE VIII

LEGAL COUNSEL

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

ARTICLE IX

MEETINGS, PUBLIC HEARINGS, QUORUMS, AND VOTING

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

B. Regular meetings of the Commission shall be held the third Thursday of each month at such time and place as designated by the Chairperson after consultation with the other members, except that the regular meeting in November shall be held on the second Thursday. Should the third Thursday fall on a federal or state holiday, the regular meeting of the

Commission will be held on the second Thursday of the month. ~~One member may appear at meetings telephonically if notice is provided to the other two members at least three (3) business days prior to such meeting and provided the other two members are present for the meeting.~~ Members may participate by electronic means of communication in accordance with the Open Meetings Law. A regular meeting may be cancelled or rescheduled by the Chairperson after consultation and written consent with all members. Special meetings of the Commission may be called by the Chairperson, provided the Chairperson gives the other members and the public at least three (3) business days notice.

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

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

ARTICLE X

DUTIES OF CHAIRPERSON

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

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

ARTICLE XI

DUTIES OF VICE-CHAIRPERSON

The Vice-chairperson shall:

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

ARTICLE XII

DUTIES OF THE SECRETARY

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

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

ARTICLE XIII

COMMITTEES

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

ARTICLE XIV

COMMUNICATION, NOTICE, PUBLICATION,

AND CORRECTION OF ERRORS

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

ARTICLE XV

COMMISSION STAFF

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

ARTICLE XVI

SUSPENSION OF PROCEDURES

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

ARTICLE XVII

AMENDMENTS

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

Effective _____

**Conflict of Interest Policy
Members of the Procurement Commission**

Purpose. The Purpose of this Conflict of Interest Policy is to identify, evaluate and disclose any actual or potential conflicts of interest that a Commission member may have in serving on the Commission, and to ensure that the activities of Commission members do not have the appearance of conflicting with the provision of full and unbiased service to the public.

Definition. “Conflict of Interest” means a material interest that may affect or may appear likely to affect a Commission member’s judgment or conduct while serving on the Commission. A Conflict of Interest is material if an ordinary person would take it into account in making a decision.

Policy.

1. Each Commission member shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:
 - i. Using public office for private gain;
 - ii. Giving preferential treatment to any person;
 - iii. Impeding government efficiency or economy;
 - iv. Losing complete independence or impartiality;
 - v. Making a government decision outside of official channels; or
 - vi. Affecting adversely the confidence of the public in the integrity of the government.
2. Each Commission member shall not directly or indirectly use, disclose or allow the use of official information which was obtained through or in connection with his or her appointment to the Commission for the purpose of furthering the private, personal, professional, or financial interest of any person, including the Commission member.
3. Each Commission member shall not directly or indirectly engage in a financial transaction as a result of, or primarily relying upon information obtained through his or her Commission appointment.
4. Each Commission member shall not receive personal, professional or financial benefit as a result of or relying on information obtained through his or her Commission appointment.

5. On an annual basis, each Commission member shall be provided with a copy of this Policy and shall be required to complete and sign an acknowledgement of the Policy.
6. Along with the acknowledgement of the Policy, each Commission member shall also disclose all actual and potential conflicts of interest on an annual basis and promptly thereafter whenever an actual or potential Conflict of Interest has been identified in connection with any matter to be brought before the Commission.
7. Each Commission member shall not vote on a matter or participate in discussion on a matter should there be an identified actual or potential Conflict of Interest.
8. While serving on the Commission, the Commission member will not participate in considerations or actions involving individuals in his or her immediate family; individuals employed by him or her, or his or her organization; services provided by him or her, or his or her organization; or any other matter in which his or her participation may create an appearance of bias or impropriety.
9. When a Commission member is in doubt as to the proper interpretation of this Conflict of Interest Policy, he or she is expected to seek the advice of the Chief Procurement Officer or his or her designee.

Policy acknowledged by:

Procurement Commission Member Signature

Date

Title

Annual Disclosure: Attach documentation disclosing any Conflict of Interests.

**HUMAN RESOURCE AGENCY
PROCEDURES:
SOUTHWEST HUMAN RESOURCE
AGENCY (SWHRA)**

PROCUREMENT POLICY	ISSUED BY: SOUTHWEST HUMAN RESOURCE AGENCY	POLICY #: 1
	Prepared By: Christy McMahan	Revision # 2 (6/16/2022)
	Approved By: SWHRA Governing Board	Effective Date: 6/16/2022

PROCUREMENT POLICY

BACKGROUND

Southwest Human Resource Agency (“SWHRA”) was established pursuant to the Human Resource Agency Act of 1973, as amended, as a not-for-profit delivery system designed to implement human services programs. SWHRA is empowered to own and dispose of property both real and personal and to receive and administer funds and contributions from private and public sources which may be used in support of human resource programs, and other funds under State and Federal assistance programs.

SCOPE

The Policy applies to all Agency Employees who purchase supplies, equipment or services, and/or select Vendors providing such items.

PURPOSE

The Procurement Policy, issued by SWHRA, shall describe the procedures that are to be followed by SWHRA in the handling of procurement activities and to provide direction and ensure a process for the review of the purchase of supplies, goods and services.

POLICY

1.0 INTRODUCTION

1.1 Standard of Conduct

No officer, employee, family member or agent of SWHRA shall unlawfully benefit directly or indirectly from the purchasing of materials or services by the SWHRA. All transactions shall be conducted in a manner to provide maximum open and free competition. No SWHRA official, employee, family member or agent shall bid on, or sell or offer for sell any merchandise, equipment or material during his/her tenure of office or employment. Neither shall any officer, employee, family member or agent accept or receive, either directly or indirectly, from any person firm or company any money or anything of value whatsoever.

SWHRA shall adhere to and strictly enforce all prevailing civil rights legislation. SWHRA complies with Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000D, which states that “No person in the United States shall, on the ground of race, color, or national origin, be excluded

from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal assistance.” SWHRA does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities in compliance with ADA (Americans with Disability Act of 1990), 42 U.S.C. § 12101.

1.2 Initiation of Purchases

Employees may request specific items for the purpose of carrying out their work assignments. After the Purchasing Requisition is completed and approved, orders will be placed by the Program Director or a Department designee. Any Employee that makes a purchase in violation of these policies may be held personally responsible for payment.

1.3 Purchasing Requisition

A Request to Purchase shall be required for those items so identified in this Policy. All Request to Purchase shall be reviewed by the Program Director. Each Request to Purchase that is approved and processed by the Executive Director results in a Purchase Requisition. All Purchase Requisitions will be assigned an identification number and that number shall appear on invoices and receipts as appropriate. Purchases are authorized on consecutively numbered Purchase Request forms by the Executive Director.

Purchase Request Forms shall not be required for items below the threshold amount as set forth in **Section 3.1 and 3.2** or for specific items listed in **Section 3.5** of this policy.

1.4 Specification Requirements

1.4.1 Specification requirements shall be based upon a clear and accurate description of the technical requirements for the material, product or service. The absence of such detail shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used. Reference to brand names, trade names, model numbers or other appropriate identification should be included to establish the required level of quality and functional capabilities. Comparable products of other manufacturers will be considered if proof of comparability is contained in the bid. Provision of such proof is the total responsibility of the Vendor and could include such things as brochures, catalog pages or other data, attached to the bid.

1.4.2 Wherever possible, all specifications for materials, products or services to be purchased by SWHRA shall be worded or designed so as to permit open and competitive bidding for the supplying of such items or services to which they apply.

1.5 Vendor Selection

All Vendors providing supplies, equipment or services must be reputable organizations having the demonstrated capacity to produce or provide services within a reasonable period of time as established by SWHRA. Vendors shall be subject to disqualification if they are found to misrepresent quality, quantity, or price.

Selection of a Vendor shall be based primarily on price, geographical location and past performance of the Vendor, as well as its apparent ability to provide the good or service. Selection of a vendor will not be restricted to geographic location if Federal funds are involved.

2.0 PURCHASING METHODS

The following are the purchasing methods that may be utilized for the purchase of goods and/or services:

2.1 Competitive Bidding Process

Purchases of items that, by their nature, have sufficiently uniform and impersonal criteria so that their purchase may be based on conformance with required specifications and lowest overall price, may be procured based on price quotes received from a number of prospective Vendors, as specified by the Executive Director and included in **Section 3**.

2.2 Sealed Bid Process/Invitation to Bid

SWHRA shall strive to obtain at least three (3) sealed bids on all purchases which exceed \$10,000, except as otherwise provided in this policy. All sealed bid requests/invitations to bid shall be approved by the Fiscal Department prior to issuance. Please see **Exhibit 1** for a description of the invitation to bid process.

2.3 Request for Proposals (RFPs)

SWHRA shall use the formal process of written proposal for certain services that exceed \$10,000 and for which an RFP shall be issued by SWHRA that identifies the criteria to be met. Please see **Exhibit 2** for a description of the RFP process.

2.4 Competitive Negotiation

2.4.1 Competitive Negotiation is an informal method for contracting for goods and services, whereby proposals are solicited from qualified suppliers, following submission of which changes in proposals and prices may be allowed, and the offer deemed by the Executive Director to be most advantageous in terms of criteria/specifications is accepted.

2.4.2 Such negotiation shall be in accordance with the procedures as specified by the Executive Director. The Executive Director shall prescribe the procedures under which the negotiation is to be conducted. These procedures shall provide for the safeguarding of the information and provide fairness to the Vendors in the negotiation process, ensuring that all communication is conducted in a manner so as not to disclose any information that would give one or more Vendors unfair advantage or unfairly enable one or more Vendors to improve their proposal.

2.4.3 In the event that such a process is to take place, purchases for amounts exceeding \$1,000 but less than \$50,000 must be approved by the Executive Director. Purchase amounts greater than \$50,000 annually shall be approved by the Executive Director and submitted to the SWHRA's Executive Committee for approval prior to entering into a contract. All such contracts shall be reported to the SWHRA's Governing Board of Directors.

2.5 Federal, State and Local Government Contracts

- 2.5.1 SWHRA may purchase, without using the formal procedures as herein contained, goods and services through a Federal, state, or local government contract, which has been duly negotiated by such authorized entities.

2.6 Proprietary/Single Source

- 2.6.1 Proprietary or single source purchases shall be allowed. These purchases are those generally associated with restricted brands or models but for which bids or quotes may be obtained from distributors or dealers. Single source purchases may be arranged without benefit of bid when an item or service is unique and has specific characteristics that can be filled by only one source. Such purchases shall be allowable on the basis that no other Vendor could reasonably provide the item(s) or services using the procedures as herein provided.

All such purchases shall adhere to the provisions as herein contained.

- 2.6.2 A justification for single source or proprietary purchases must be included in the file. In making the final determination, the Executive Director should consider at least the following:

1. Whether the Vendor legally possesses exclusive or predominant capabilities or the item contains a patented feature providing a superior utility not obtainable from similar products;
2. Whether the product or service is unique and easily established as one of a kind;
3. Whether the program requirements can be modified so that competitive products or services may be used;
4. Whether the product is available from only one source and not merchandised through wholesalers, jobbers, or retailers;
5. Whether items must be interchangeable or compatible with in-place items.

- 2.6.3 After review of the written justification from the requisitioning department and ascertaining that the item to be purchased meets one or several of the aforementioned criteria, the single source purchase may be made without following competitive bid procedures as herein contained. A written quote from the supplier should be placed in the file.

3.0 CATEGORIES OF PURCHASES

SWHRA has determined there are specific categories for which they make purchases. The requirements for each type of purchase are outlined below:

3.1 Durable and Consumer Goods

Purchase Price	Purchasing Requirement
\$0 - \$999	Must be purchased pursuant to the Program Director's instructions.
\$1,000 - \$4,999	Must be purchased using a Request to Purchase and Purchase Requisition, with approval from the Program Director, and either: (1) the Executive Director; or (2) the Fiscal Director.
\$5,000 - \$9,999	Requires that SWHRA secure at least three (3) competitive bids. Must be purchased using a Request to Purchase and a Purchase Requisition, with approval from the Program Director and the Executive Director.
\$10,000 - \$49,999	Must utilize a sealed bid process unless the item is available under a Federal, State or Local government contract.
\$50,000 and Up	Must utilize a sealed bid process unless the item is available under a Federal, State or Local government contract. Must be approved by the SWHRA Executive Committee and approved by the appropriate Federal or State agency when applicable.

3.2 Vehicle Maintenance

Estimated Cost	Purchasing Requirement
\$0 - \$999	Must be procured from a Vendor on the "Approved Vendor List," and with approval from the Program Director.
\$1,000 - \$1,999	Must be purchased using a Request to Purchase and Purchase Requisition, with approval from the Program Director and either: (1) the Executive Director or (2) the Fiscal Director.
\$2,000 and Up	Must be purchased using a Request to Purchase and Purchase Requisition, with approval from the Program Director and the Executive Director.

3.3 Personal, Professional or Consultant Services

Where the SWHRA desires to procure personal services, professional services and/or consultant services, the SWHRA shall either follow the requirements as specified herein or, as appropriate, utilize a method that in the discretion of the Executive Director is determined to be fair and open to competition. The process shall generally include a consideration and comparison of potential contractors, based upon factors such as service provider qualifications, experience, and technical approach.

3.4 Emergency Orders

Emergency orders may be placed by the Executive Director when immediate delivery is necessary to meet emergencies from unforeseen causes for continuation of services. A written memo must be attached to the file copy of the Purchase Requisition. All emergency purchases shall, if practicable, be made on the basis of at least the use of price quotes.

3.5 Exceptions. SWHRA shall not be required to utilize the purchasing methods in **Section 2** for the items or services that have sufficiently uniform and impersonal criteria, so that their purchase is based upon conformance with certain specifications and lowest overall price including but not limited to the following items:

1. Telephone billings;
2. Freight charges not incurred in connection with the purchase of supplies and equipment;
3. Postage including purchase of metered postage;
4. Charges on credit cards and gasoline credit cards;
5. Bonding fees or notary public fees;
6. Utility billings and connection fees;
7. Tuition, fees and other supplies for training of individuals, or other purchases at institutions which courses of study are on the approved THEC list, provided such expenses do not exceed \$2,000;
8. Occasional charges for rooms for meetings and attendant costs;
9. Rental of vehicles while on approved travel;
10. Rental or leasing of office and storage space;
11. Or other contractual agreement with detailed documentation provided for within the agreement;
12. Newspaper advertisements or listings; and
13. Such other items as may be determined by the Executive Director from time to time.

4.0 GENERAL PROVISIONS

4.1 Liability Claims and Damages

SWHRA, its officers, agents, and employees shall be held harmless from liability from any claims, damages and actions of any nature arising from the use of any materials furnished by the Vendor, provided such liability is not attributable to negligence on the part of the SWHRA or failure of the SWHRA to utilize the materials in the manner outlined by the Vendor in descriptive literature or specifications submitted with the Vendor's bid. Vendor will agree to abide by SWHRA's purchasing procedures.

4.2 Controversies/Disputes

Resolving controversies/disputes concerning protest of qualifications of bidders, suspension from bidding, and invitation to bid process, and stay of award prior to actual award shall be resolved in the manner provided herein. Vendors who disagree in any of the aforementioned areas may document their position and protest in writing and request reevaluation within ten (10) days of the bid opening or award. This re-evaluation shall be initiated by the person or person(s) who were responsible. They shall review and provide a memorandum to the Program Director, Fiscal Director and Executive Director. All relevant levels of administration shall review the reevaluation and make written comments regarding their thoughts and recommendations. The Executive Director or designee shall review the reevaluation, make a determination and notify the Vendor of the decision. If the reevaluation does not resolve the disagreement, the Vendor may request evaluation of the record, including the written protest documentation, through a hearing with the Executive Director. The Executive Director shall issue a letter to the bidder(s) as to his/her findings and decisions. The evaluation by the Executive Director shall be submitted to the Executive Committee for review. This process shall constitute the final determination for the Agency.

4.3 Revisions/Amendment

Any revisions or amendments to the Purchasing Policies and Procedures set forth in the policy shall be submitted to SWHRA's Executive Committee for review and approval.

4.4 Taxes

SWHRA is exempt from Federal Excise Taxes and State Sales Tax, and purchases shall be made in accordance with this tax status. For instance, prices quoted by Vendors shall not contain provisions for Federal Excise Taxes or State Sales Tax unless required by law or contract.

EXHIBIT 1

PROCEDURES FOR SEALED BIDS: INVITATIONS TO BID

1.0 SEALED BID/INVITATIONS TO BID PROCESS

1.1 Bid Submission. Invitations to bid shall indicate that bids must be received by SWHRA on or before a specified date or hour.

In preparation of Invitations to Bid it shall be the intent of SWHRA to set forth such invitations in a manner which, where possible, provides the following:

1. Terms and conditions clearly stating the requirements for the bid response and language to bind the parties in the event of award;
2. Clear and definitive specifications which shall, wherever possible, permit open and competitive bidding and minimize the likelihood of requests by prospective proposers for clarification;
3. Instructions for delivering the service requested or packaging, shipping, and delivering the commodity purchased, and, where appropriate, instructions for storage by the Vendor;
4. A timeline of the process that specifies deadlines;
5. A description of the factors to be considered in evaluating the proposals – factors may include but are not limited to service provider qualifications, experience, technical approach, and cost;
6. A declaration of the contract terms and conditions which shall be required; and
7. Any requirements for bid and/or performance bonds.

Bids should be returned in sealed envelopes, addressed in the follow manner:

From _____

*SOUTHWEST HUMAN RESOURCE AGENCY
P. O. Box 264
HENDERSON, TN 38340*

*DO NOT OPEN
SEALED BID*

- 1.2 SWHRA may cancel an invitation to bid any time prior to bid opening. Bids delivered past the date and hour designated for opening will be rejected and placed in the file unopened.
- 1.3 Invitations to bid may be mailed (in written or electronic form) to prospective Vendors. Invitations for bid may also be published in a newspaper of general circulation. Only one copy of a bid is required to be returned to SWHRA. When a sealed bid is opened, examined and recorded, the original copy is placed in a file for evaluation by the Executive Director.
- 1.4 The person signing the bid must be authorized to bind the Vendor to contract. A bid not signed will be rejected. Unsigned bids cannot be signed after the bid has been opened, even if the Vendor or his representative is present at the bid opening.
- 1.5 Terms and conditions established by the bidder must be noted conspicuously on the face of the invitation. If the conditions vary from the terms listed in the invitation to bid, the bid may be considered unresponsive and the proposal may be rejected.
- 1.6 Net pricing shall be requested for the units specified. Net price is list price less all trade or other discounts offered. Insertion of price escalator clauses, minimum order requirements, delivery costs, and other items should be listed where appropriate.
- 1.7 Erasures or use of correction fluid on bid forms are not acceptable. Errors may be corrected, prior to submission, by lining out and entering the substituted words or figures with the change initialed by the person signing the bid in ink. Bids shall not be altered or amended after the bid opening. In the case of errors in the extension prices, the unit price will govern. No corrections will be made in pencil.
- 1.8 Amendment or withdrawal of bids may be permitted under certain circumstances. Prior to the opening, a letter or email submitted to the Executive Director, or designee, may be used to withdraw a bid. Emails should not be used to amend a bid. After the opening, a Vendor may withdraw their bid when there is obvious error in cost data or where enforcement would impose considerable hardship. Consideration for withdrawal is at the sole discretion of the Executive Director or designee and can be made at the written (or e-mail) request of the Vendor. No change in bid price or provision of bids shall be made.
- 1.9 Questions concerning invitations to bid should be directed to the Executive Director or designee or other whose name, phone number or e-mail address is listed on the invitation to bid.
- 1.10 After the sealed bid is opened after the designated time bid files may be examined or reviewed during normal working hours, after completion of evaluation and prior to award. Request for review should be made through the Executive Director.
- 1.11 **Rejection of Bids.** The Executive Director may reject any or all bids. Action to reject all bids shall be taken 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.
- 1.12 **Bonds.** As appropriate, any bonds which are required shall be stated in the invitation. To the extent possible, such bonds shall comply with the rules and regulations which apply to the State of Tennessee or the grant or contract, whichever is more restrictive.

2.0 AWARD PROCESS

- 2.1** Bids shall be awarded to the lowest bidding, qualified responsible and responsive Vendor considering the factors stated in the invitation. Such factors may include but not be limited to:
1. Apparent ability to perform, including past performance;
 2. Price;
 3. Quality;
 4. Purpose or use;
 5. Discount for payment;
 6. Freight;
 7. Delivery date.
- 2.2** The invitation to bid sets forth the evaluation criteria to be used, no criteria or factors may be used in bid evaluations that are not set forth in the invitation to bid.
- 2.3** Where more than one item is specified in the invitation, SWHRA reserves the right to determine the lowest bidding Vendor, either on the basis of each individual item, or group of items, or total of all items, unless otherwise stated in the invitation to bid.
- 2.4** Tie bids may exist where two or more Vendors offer products that meet all specifications, terms and conditions at identical prices. Tie bids will be broken by the following methods, in descending order of preference:
1. In-state businesses;
 2. Small businesses;
 3. Award item(s) to Vendor who was low Vendor on other item(s) being on the same requisition;
 4. Best delivery;
 5. By lot or coin toss.

3.0 PROCEDURES AND GUIDELINES FOR VENDORS

- 3.1** Notice of back orders, when necessary, should be presented to SWHRA in writing, specifying expected shipping or delivery date.
- 3.2** Product deficiencies or Vendor non-compliance will be reported to the Vendor in writing by the Executive Director. The notification shall request a written response from the Vendor to the SWHRA. A Vendor may be removed from a list of eligible Vendors for failure to follow the published procedures and requirements. Failure to cure non-compliance may also result in removal of the Vendor from the approved list of bidders.
- 3.3** Cancellation of Purchase Requisitions shall be in writing by the Executive Director or his designee. A contractor may request cancellation and SWHRA may grant this request when it is deemed to be in the SWHRA's and/or general public's best interest to do so. SWHRA has the right to disqualify any contractor from future bidding if the contractor has defaulted on any previously awarded contract.
- 3.4** Payment may be withheld until such time as all requirements of the purchasing contract have been complied with in full.

4.0 PROCEDURES FOR PURCHASE REQUISITIONS AND BILLINGS

- 4.1** Pre-numbered Purchase Requisitions are supplied by an outside vendor. They will be signed by the Executive Director and the appropriate Program Director. The original Purchase Requisition will be submitted to the Vendor only when required by the Vendor.
- 4.2** Billings will be matched with the invoice and Purchase Requisition as materials are received by SWHRA.
- 4.3** Review for payment will be by the Executive Director. The invoice, Purchase Requisition, and receiving slip, where applicable, will be reviewed by the Fiscal Department prior to certification for payment.

EXHIBIT 2

PROCEDURES FOR REQUEST FOR PROPOSALS (RFPS)

1.0 REQUEST FOR PROPOSALS (RFPS)

The formal solicitation of written proposals shall comply with the following requirements:

- 1.1 SWHRA shall prepare and issue a RFP and evaluate proposals in accordance with this policy. Failure by SWHRA to comply with said rule and policy alone shall not be deemed a defect requiring rejection of all bids, said decision remaining in the discretion of SWHRA.
- 1.2 A RFP shall set forth specific provisions in accordance with this policy including:
 - 1.2.1. a clear and accurate description of the technical requirements for the service to be procured - the service technical requirements and scope shall not contain features which unduly restrict competition and shall be in sufficient detail to minimize the likelihood of requests by potential proposers for clarification;
 - 1.2.2. instructions regarding the submission of proposals;
 - 1.2.3. a timeline of the RFP process that specifies deadlines - service providers shall be given a reasonable time, as determined by SWHRA, to consider the required scope of services and the proposal evaluation factors before proposals must be submitted;
 - 1.2.4. requirements and restrictions regarding the RFP;
 - 1.2.5. a description of the factors to be considered in evaluating the proposals – factors may include but are not limited to service provider qualifications, experience, technical approach, and cost; and
 - 1.2.6. a declaration of the contract terms and conditions which shall be required by SWHRA.
- 1.3 Upon approval, SWHRA shall send an actual RFP document or a formal notice stating that the specific RFP has been released to a documented list of potential service providers. Notice of a RFP may also be published in a newspaper of general circulation. SWHRA shall compile the list of potential service providers from those known to SWHRA staff. SWHRA shall determine the number of service providers to include on the list by considering the nature of the service sought, the anticipated dollar amount of the resulting contract, and the number of known service providers.
- 1.4 SWHRA is not required to send an RFP or RFP Notice to more than a total of fifteen (15) service providers provided, however, that SWHRA shall disseminate the RFP or RFP Notice as required by this policy and to all that request the specific RFP. A general or standing request for notice of all RFPs or all RFPs of a given type of service shall not suffice as a request for a specific RFP and shall create no obligation on SWHRA.

- 1.5 To foster the integrity of the RFP evaluation process, each proposer shall be required to submit the Cost Proposal component of the proposal in a sealed and labeled envelope separate from the Technical Proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.
 - 1.5.1 The cost proposals shall not be opened until after the evaluation of the technical component is completed. After the technical proposal evaluation is completed, the cost proposals shall be opened and evaluated, and the scores of both components shall be combined to arrive at a total evaluation score provided, however, that the cost proposal shall not be opened if the associated technical proposal has been deemed non-responsive and is rejected by SWHRA.
 - 1.5.2 Any proposal which fails to adequately separate the cost proposal components from the technical proposal shall be considered non-responsive and rejected by SWHRA.
- 1.6 Proposal evaluations shall be conducted by SWHRA employees in such a manner as to reasonably ensure that all proposals are impartially considered and the policy requirements are adequately met.
 - 1.6.1 Proposals shall be evaluated on the basis of factors pertinent to the service sought and detailed in the RFP document.
 - 1.6.2 Neither the technical proposal nor the cost shall be the only criterion for a contract award recommendation. However, specific factors may be set forth as a criterion for determining which proposals shall be considered responsive to the RFP.
- 1.7 SWHRA shall communicate, clarify, and negotiate in the best interests of SWHRA, provided that all communication is in a manner so as not to disclose any information that would give one or more proposers unfair advantage or unfairly enable one or more proposers to improve their proposal.
- 1.8 SWHRA shall have the right, at its sole discretion, to amend a RFP in writing at any time.
- 1.9 SWHRA shall have the right, at its sole discretion, to reject any and all proposals.
 - 1.9.1 Any proposal that does not meet the requirements of a RFP may be considered to be nonresponsive, and the proposal may be rejected.
 - 1.9.2 Any proposal that restricts the rights of SWHRA or otherwise qualifies the proposal may be considered to be nonresponsive, and the proposal may be rejected.
 - 1.9.3 Whenever SWHRA proposes to reject all proposals for a certain purchase, such action shall be taken only for the following reasons:
 1. unreasonably high prices or failure of all proposals to meet technical specifications;
 2. error in the request for proposals;

3. cessation of need;
4. unavailability of funds;
5. a determination by SWHRA that proceeding with the procurement would be detrimental to the best interests of SWHRA, the reason for which must be documented.

1.10 SWHRA shall have the right, at its sole discretion, to cancel a RFP in its entirety and, at its sole discretion, to reissue or not reissue a RFP. The approval of the Executive Director shall be required prior to the cancellation of a RFP, and SWHRA shall make a record of such approved request.

EXHIBIT 3

DEFINITIONS

“Award” means a notice to a respondent of a solicitation of the acceptance of a bid or proposal.

“Bid” means an offer, as a price, whether for payment or acceptance given to a prospective purchaser upon his or her request, usually in competition with other offers. Also, an offer by a buyer to a seller, as at an auction.

“Employee” means all officers, employees and staff members of SWHRA.

“Executive Director” means SWHRA Executive Director or designee.

“Invitation to Bid” a request, verbal or written, which is made to prospective suppliers requesting the submission of a bid on commodities or services. This includes all documents, whether attached or incorporated by reference, utilized for soliciting bids.

“Purchase Requisition” means a purchaser's document used to formalize a purchase transaction with a Vendor. Requisition, when given to a Vendor, may contain statements as to the quantity, description, and price of the goods ordered; agreed terms, and all other agreements pertinent to the purchase and its execution by the Vendor.

“Request to Purchase” means the form used to request the purchasing department to purchase goods or services from Vendors that cost between \$1,000 and \$4,999.

“Vendor” means a supplier of items, goods or services.

**REPORT
CERTIFICATION RELATED ITEMS
(CMRA)**

May 2022

RE-CERTIFICATION

1. Item No. 763.A143
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation, Region 2 Office Complex, 7512 Volkswagen Drive, Chattanooga, Tennessee.
Annual Price: \$249,541.56, or \$20,795.12 per month, or \$1.99 per square foot for a total of 125,151 square feet.
Price Increase Requested. This increase of 7% represents an increased cost in labor, supplies and fuel.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 6/01/2022-5/31/2023.

CERTIFICATION

2. Item No. 763.A216
Service: Janitorial Services
Agency/Location: Department of Military, Tennessee Emergency Management Agency, Southeast Regional Office, 1801 Holtzclaw Avenue, Chattanooga, Tennessee.
Annual Price: \$11,940, or \$995 per month, or \$3.64 per square foot annually for a total of 3,283 square feet.
Satisfaction: No complaints have been filed.
Certification Requested for Period of 6/01/2022-5/31/2023.

June 2022

RE-CERTIFICATION

1. Item No. 763.20
Service: Rest Area Maintenance
Agency/Location: Department of Transportation, Nashville, Tennessee.
Annual Price: \$5,312,316.72
Price increase requested. This accounts for wage and benefit increases.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 7/01/2022-6/30/2023.

2. Item No. 763.55
Service: Janitorial Services
Agency/Location: Tennessee Department of Safety, I-40 Scale House Complex, Mile Marker 372, Knoxville, Tennessee.
Annual Price: \$9,230.40, or \$769.20 per month, or \$2.6372 ft² per year for a total of about 3,500 square feet.
Price increase requested. The 7% increase is to cover the increased cost of labor, supplies, and fuel.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 7/01/2022-6/30/2023.

3. Item No. 763.A92
Service: Janitorial Services
Agency/Location: Tennessee Army National Guard Headquarters, Houston Barracks, 3041 Sidco Drive, Nashville, Tennessee.
Annual Price: \$196,895.52, or \$16,407.96 per month or \$1.15 per square foot for a total of 170,800 Square feet for nighttime janitorial services and day porter services. Annual Price: \$57,491.40 or \$28,745.70 per visit for a total of 2 visits for strip and waxing VCT flooring.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 7/01/2022-6/30/2023.

CERTIFICATION

4. Item No. 763.A217
Service: Lawn Maintenance Services
Agency/Location: Department of Intellectual and Developmental Disabilities, Ruilman Center, 293 Kirkpatrick Lake Road, Lebanon Tennessee.
Annual Price: \$10,146.08, or \$724.72 per cycle, or \$90.59 per acre per year for a total of 8 acres for 14 cycles.
Certification Requested for Period of 7/01/2022-6/30/2023.

ADDENDUM

5. Item No. 763.A196
Service: TDOC Uniforms
Agency/Location: Department of Correction, Nashville, Tennessee.
Annual Price: \$1,800,000
No price increase requested. The addendum is to change two Edison descriptions.
Satisfaction: No complaints have been filed. Addendum will have an effective date of 7/01/2022 and run until the end of the contract term on 9/30/2022.

DE-CERTIFICATION

6. Item No. 763.A186
Service: Janitorial Services
Agency/Location: Department of Intellectual and Developmental Disabilities, Tennessee Early Intervention System, 2761 Island Home Blvd, Knoxville, Tennessee.
Annual Price: \$8,693.28, or \$724.44 per month or \$1.09 per square foot for a total of 8,000 square feet.
Satisfaction: Reason for decertification: This TEIS Office has moved into a new facility with other DIDD divisions and no longer uses the location that was being cleaned. We acknowledge the disunion of this relationship for services at this location.
De-Certification Requested for 7/01/2022.

July 2022

RE-CERTIFICATION

1. Item No. 763.A208
Service: Grounds Maintenance Services
Agency/Location: Department of Human Services, Manchester, Tennessee.
Annual Price: \$3,625.20 per year, or \$201.40 per cycle for approximately 18 cycles for approximately 1.5 acres.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 8/01/2022-7/31/2023.

CERTIFICATION

2. Item No. 763.A218
Service: Grounds Maintenance Services
Agency/Location: Department of Mental Health and Substance Abuse Services, Middle Tennessee Mental Health Institute, Nashville, Tennessee.
Annual Price: \$36,930.40 per year, or \$922 per cycle of Mowing MTMHI for 23 cycles, \$63.60 per cycle of Mowing Ezell Pike for 14 cycles, \$2,120 per cycle of Leaf Collection for 2 cycles, \$1,007 per cycle of Pruning or Trimming for 6 cycles, or \$95.40 per cycle of Weed Eradication for 6 cycles, or \$31.80 per cycle of Mulch Application for 125 cycles for approximately 35 acres.
Certification Requested for Period of 8/01/2022-7/31/2023.
3. Item No. 763.A219
Service: Grounds Maintenance Services
Agency/Location: Department of Mental Health and Substance Abuse Services, Central State Cemetery Property, Nashville, Tennessee.
Annual Price: \$9,540 per year, or \$477 per cycle for a total of 20 cycles for approximately 5 acres.
Certification Requested for Period of 8/01/2022-7/31/2023.
4. Item No. 763.A220
Service: Grounds Maintenance Services
Agency/Location: Department of Environment and Conservation, Pinson Mounds State Archeological Area, Pinson, Tennessee.
Annual Price: \$25,970 per year, or \$1,855 per cycle for 14 cycles for approximately 13.5 acres.
Certification Requested for Period of 8/01/2022-7/31/2023.

ADDENDUM

5. Item No. 763.38d
Service: SWC 923 Continuous Forms & Snap Out Forms
Agency/Location: Department of General Services, Central Procurement Office, Nashville, Tennessee.
Annual Price: Current Spend \$ 300,865.20 (November 2021-July 2022).
Price increase requested. A 5% price increase is requested due to the increase in the cost of raw materials and supplies. This amendment also extends delivery to 60-90 days due to material available. In rare instance that materials become unavailable, delivery may take longer than 60-90 days.
Satisfaction: No complaints have been filed. Addendum will have an effective date of 8/01/2022 and run until the end of the contract term on 10/31/2022.

6. Item No. 763.A196
Service: TDOC Uniforms
Agency/Location: Department of Correction, Nashville, Tennessee.
Annual Price: \$1,800,000
No price increase requested. The addendum is to add the color black as an option for First Tactical V2 tactical pants.
Satisfaction: No complaints have been filed. Addendum will have an effective date of 8/01/2022 and run until the end of the contract term on 9/30/2022.

August 2022

RE-CERTIFICATION

1. Item No. 763.A207
Service: Grounds Maintenance Services
Agency/Location: Department of Human Services, Tennessee Rehabilitation Center, Cookeville, Tennessee.
Annual Price: \$2,988.72 per year, or \$213.48 per cycle for approximately 14 cycles for approximately 3 acres.
Price increase requested. The increase reflects an increase in price per cycle, but less cycles throughout the year. The pricing on this new contract fixes a quote error from the contractor and reflects a change in requested number of cycles from the agency.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 9/01/2022-8/31/2023.

ADDENDUM

2. Item No. 763.A220
Service: Grounds Maintenance Services
Agency/Location: Department of Environment and Conservation, Pinson Mounds State Archeological Area, Pinson, Tennessee.
Annual Price: \$28,000 per year, or \$2,000 per cycle for 14 cycles for approximately 19 acres.
Price increase requested. There was a transfer of land from the Department of Agriculture to the Department of Environment and Conservation (approx. 2 acres). The price increase reflects the larger area of land that will need to be serviced through this contract.
Satisfaction: No complaints have been filed.
Addendum will have an effective date of 9/01/2022 and run until the end of the contract term on 7/31/2023.

September 2022

RE-CERTIFICATION

1. Item No. 763.A66
Service: Janitorial Services
Agency/Location: Department of Transportation, TDOT REG 4 Headquarters, 300 Benchmark Place, Jackson, Tennessee.
Annual Price: \$167,629.97 annually for Janitorial and Day Porter Services. Janitorial Services are \$12,403.54 per month, or \$2.10 per square foot per year. Day Porter Services are \$1,565.63 per month or \$9.03 per hour for approximately 2080 hours. The building has a total of 70,916 square feet.
No Price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2022-9/30/2023.

2. Item No. 763.76
Service: Janitorial and Vehicle Prep & Inspection Services
Agency/Location: Department of Transportation, TDOT Motor Pool, 1st Street North, Nashville, Tennessee.
Annual Price: \$23,826.72 or \$1,985.56 per month.
No Price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2022-9/30/2023.

3. Item No. 763.A175
Service: Janitorial Services
Agency/Location: Department of Military, Tennessee Air National Guard, Tennessee Air National Guard Base (Berry Field), Nashville International Airport, Nashville, Tennessee.
Annual Price: \$ 94,968.44, or \$13,015.01 per month, \$52,060.04 annually or 0.3289 per sq. ft. (4 months); or \$5,363.55 per month, \$42,908.40 annually 0.3991 per sq. ft. (8 months).
No Price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2022-9/30/2023.

4. Item No. 763.A130
Service: SWC 920 Drug Testing Kits
Agency/Location: Department of General Services, Central Procurement Office, 312 Rosa L. Parks Ave, Nashville, Tennessee.
Annual Price: Current Spend: \$1,184,448.52 (September 2021-September 2022).
No Price increase requested. A price decrease was requested for three items.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2022-9/30/2023.

5. Item No. 763.36ad
Service: SWC 924 Female Sanitary Products
Agency/Location: Department of General Services, Central Procurement Office, 312 Rosa L. Parks Ave, Nashville, Tennessee.
Annual Price: Current Spend: \$75,458.00 (September 2021-September 2022).
Price increase requested. A price increase of 21.0587% is requested due to a manufacturer increase.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2022-9/30/2023.
6. Item No. 763.A169
Service: SWC 917 Grease Trap Service
Agency/Location: Department of General Services, Central Procurement Office, 312 Rosa L. Parks Ave, Nashville, Tennessee.
Annual Price: Current Spend: \$1,025,662.00 (September 2021-September 2022).
No Price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2022-9/30/2023.
7. Item No. 763.A196
Service: TDOC Uniforms
Agency/Location: Department of Correction, Nashville, Tennessee.
Annual Price: Maximum Liability of \$1,800,000.00
Price increase requested. A price increase is requested on most items. Maternity panel options are added to Women's First Tactical V2 Pants and a red option is added to the First Tactical Polos.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 10/01/2022-9/30/2023.

CERTIFICATION

8. Item No. 763.A221
Service: Grounds Maintenance Services
Agency/Location: Department of Environment and Conservation, Seven Islands State Birding Park, 2809 Kelly Lane, Kodak, Tennessee.
Annual Price: \$19,222.17 for 32 cycles per year, or \$600.69 per cycle, or \$75.09 per acre for approximately 8 acres.
Certification Requested for Period of 10/01/2022-9/30/2023.

**REPORT
LIMITATION OF LIABILITY**

	A	B	C	D	E	F	G	H
1	REVISED Limitation of Liability Report 5/5/22 to 9/29/22							
2	Number	Form	Subject	Description	Status	Submit Date	Owner	Date Approved
3	7524	Limitation_Liability_Request	31865-00619 TennCare Data Ecosystem IBM LOL Request	IBM will provide a cloud-based data ecosystem, which is a collection of an infrastructure, analytics and applications to capture and analyze data. The system provided by IBM to TennCare, will allow it the ability to look through every record or document and to quickly isolate any errors or mistakes. Each of the four (4) contracts that will be issued under this procurement, will require the standard two (2) times the maximum liability provision in compliance with Tenn. Code Ann. § 12-3-701 but with the removal of the insurance coverage requirement. Due to the low risk of liability, and the other risk protections associated with the scope of this contract, the State will be adequately protected in the event of any liability issues arising under the contract. This slight modification in the Limitation of Liability was necessary for TennCare to procure this necessary software services and for effective cloud management of data.	A	5/9/2022	James Brimm	5/12/2022
4	7580	Limitation_Liability_Request	33001 Limitation of Liability Select USA Invesment Summitt 2022	The Tennessee Department of Economic and Community Development ("TNECD") proposed to enter into a contract with SelectUSA Investment Summit ("Select") to obtain a exhibitor's booth for a three (3) day period during the 2022 SelectUSA Annual Investment Summit ("Summit"). The Summit annually attracts over 1,200 potential investors from more than 66 area markets and international economic development officials. This is an excellent opportunity for TNECD to market the benefits of doing business with the State. The parties negotiated the terms and issued a Letter of Adhesion to address the Limitation of Liability as set forth in Tenn. Code Ann. § 12-3-701. TNECD viewed the benefit derived from participating at the Summit to greatly offset any risk associated with the Limitation of Liability clause. The risk is extremely limited and TNECD does not expect any impact arising from the proposed Limitation of Liability on the State.	A	5/19/2022	Julia Blair Jones	5/20/2022
5	7660	Limitation_Liability_Request	33001 Heritage Exposition SelectUSA Investment Summit Limit Liability	The Tennessee Department of Economic and Community Development ("TNECD") was required to enter into an exclusive contract with SelectUSA Investment Summit ("Select") to purchase all exhibit items for use in its exhibition booth during the three (3) day 2022 SelectUSA Annual Investment Summit ("Summit"). This annual event attracts over 1,200 potential investors from more than 66 area markets and international economic development officials and is an opportunity for marketing of the State. The parties negotiated the Summit agreement and prepared a Letter of Adhesion to address various terms and conditions, including the Limitation of Liability clause, as set forth in Tenn. Code Ann. § 12-3-701. TNECD viewed the benefit derived from participating at the Summit to greatly offset any risk to the State. The risk is extremely limited and TNECD does not expect any impact arising from the proposed Limitation of Liability on the State and does not pose any appreciable risk to the State.	A	6/9/2022	Julia Blair Jones	6/10/2022
6	7684	Limitation_Liability_Request	31865-00843 TennCare Co-Op PDMS Maximus LOCL Request	Medicaid Management Information System ("MMIS"), provides core provider services, providers self-portal design and provider enrollment, and management customer care services for TennCare. This contract offers its provider services module that is a vital part of the overall initiative for a state to replace outdated legacy components of Medicare enterprise. As a result of contract negotiations with MMIS, the parties reached an agreement to adopt a decreasing scale associated with the Limitation of Liability that will reduce periodically from 2 times to 1.25 times the maximum liability. This change did not result in an increase risk to the State and the change was necessary for TennCare to procure this necessary software module services to support the modernization of the Medicaid program. Note: This submission was denied and replaced with revised LOCLR # 7863.	D	6/15/2022	James Brimm	
7	7723	Limitation_Liability_Request	31865 - Med/DERP LOL Request for Contract 74450	Medicaid Evidence-Based Decisions and Drug Effectiveness Review Projects ("MED/DERP") are two (2) Medicaid collaborations that leverage academic health center researchers' comparative effectiveness to assist TennCare in making drug coverage decisions. An agreement was reached with the State of Oregon in coordination with the risk associated with MED/DERP that resulted in the revision of the Limitation of Liability clause to include the breach of Personal Health Information ("PHI") and Personally Identifiable Information ("PII"). The risk associated with this section change is low considering the state contractor will be required to abide by Tenn. Code Ann. § 12-3-701 and TennCare did not foresee any negative implications in the requested language modification.	A	6/24/2022	Donovan G Morgan	6/27/2022

	A	B	C	D	E	F	G	H
8	7724	Limitation_Liability_Request	32110-T1-SWC3022 Manufacturer Based Cloud Solution - LOL	This Statewide Contract ("SWC") is a cloud-based solution contract negotiated through the Department of General Services, Central Procurement Office with Oracle Computer Technology Corporation ("Oracle"). The Oracle Cloud Services ("Services") include infrastructure as a Service ("IAAS"), platform as a Service ("PAAS") and Software as a Service ("SAAS"). During negotiations, the State agreed to change the Limitation of Liability clause from 2 times the Estimated Liability to 2 times the actual amount paid to Oracle under the contract. This change in the Limitation of Liability clause does not pose any substantial risk and is in the best interest of the State since it closely aligns with the intent of Tenn. Code Ann. § 12-3-701 with respect to the statute being in line with the amount the contractor would anticipate earning under the contract.	A	6/23/2022	Michael Gross	6/24/2022
9	7787	Limitation_Liability_Request	34301 Illumina Miseq LOL Request	The Department of Health ("DOH") negotiated a sole-source contract for service and maintenance of MiSeq instruments manufactured by Illumina, Inc. ("Illumina"). Illumina develops, produces, and markets integrated systems for the analysis of genetic variation and biological functions. During negotiations, Illumina agreed to the 2 times maximum liability to also include estimated liability or maximum revenue. The risk is minimal to the State because the liability remains 2 times the maximum liability. Under the circumstances, the State is adequately protected from any potential claims it may have against the Contractor and in accordance with the liability exposure found in Tenn. Code Ann. § 12-3-701, while allowing DOH to acquire the necessary service and maintenance of the MiSeq instruments.	A	7/6/2022	Lindsay Oliveras	7/7/2022
10	7794	Limitation_Liability_Request	31786 Limitation of Liability Pharmacy Benefits Manager (PBM) contract	Pharmacy Benefits Manager Services ("PBM") provides management of pharmacy claims payments and services for the State. During its negotiations with PBM, it was determined that instead of the 2 times maximum liability provision, that this would be revised to an amount equal to 1 times the total Paid Claims. This change reflects the true potential liability to State for the performance of PBM under the contract. This change in the Limitation of Liability was necessary for Benefits Administration ("BA") to obtain these claims and management services and reduce the risk potential to the State.	A	7/8/2022	Seannalyn N Brandme	7/15/2022
11	7844	Limitation_Liability_Request	33701-71522: FAST UI Benefits LOL	The Department of Labor & Workforce Developments negotiated an Unemployment Insurance Benefits Management System contract with Fast Enterprises, LLC ("Fast"). During negotiations, it was agreed to reduce the Limitation of Liability clause from 2 times the maximum liability to 1 times the maximum liability. Note: This submission was denied pending submission of a revised LOCLR.	D	7/15/2022	William Kemmer	
12	7863	Limitation_Liability_Request	TennCare 31865-00843 Co-Op Maximus PDMS LOCL Revised Document	This was a revised submission of # 7684 seeking a minor clarification. In summary, Medicaid Management Information System ("MMIS"), provides core provider services, providers self-portal design and provider enrollment, and management customer care services for TennCare. This contract offers its provider services module that is a vital part of the overall initiative for a state to replace outdated legacy components of Medicare enterprise. As a result of contract negotiations by CPO and conducted with MMIS, the parties reached an agreement to adopt a decreasing scale associated with the Limitation of Liability that will reduce periodically from 2 times to 1.25 times the maximum liability. This revised Limitation of Liability Request specified that the liability of MMIS would be reduced to 1.25 times the maximum liability following its successful completion of the DDI Phase and acceptance by the State. This revision did not increase the risk to the State and the changes in the Limitation of Liability clause were reasonable and necessary to procure this necessary software module services under the improvements to the Medicaid program.	A	7/21/2022	James Brimm	7/22/2022
13	7881	Limitation_Liability_Request	34901-01357 LOL Fast	The Tennessee Department of Safety and Homeland Security ("TDOSHS") negotiated a contract with Fast Enterprises, LLC ("Fast") related to the Automated Driver's License Issuance Systems and its maintenance and support, upgrades and future enhancements. Fast requested that the State agree to insert a clarification paragraph in the Limitation of Liability provision stating that its indemnification obligations and other remedies are subject to the Limitation of Liability provision. Since the Limitation of Liability provision is not being reduced from statutory requirements of 2 times the maximum liability, it was determined that this clarifying statement posed no appreciable risk to the State.	A	7/28/2022	Marki Mascolo	8/4/2022
14	7882	Limitation_Liability_Request	34301 Clear Labs LOL request	This request is related to a single, one-time purchase by the Tennessee Department of Health ("DOH") of a ClearDx instrument to perform SARS-CoVA reaction testing. During negotiations, the contractor requested an exception that the Limitation of Liability provision would not apply when the instrument was not used in accordance with the contractor's instructions. It was determined that the potential impact for liability was nominal since DOH intends to use the instrument for its intended purpose only and in accordance with the vendor's specific instructions.	A	7/28/2022	Lindsay Oliveras	7/28/2022

	A	B	C	D	E	F	G	H
15	7926	Limitation_Liability_Request	34901-01407 Limitation of Liability AAMVA	American Association of Motor Vehicle Administrators ("AAMVA") will provide AAMVNet services, network services, program services and driver services transactions to the Tennessee Department of Safety and Homeland Security ("TDOSHS"). During negotiations, it was determined that instead of the 2 times maximum liability provision, that this would be revised to an amount equal to 1 times the maximum liability. This change reflects the true potential liability to State for the performance of AAMVA under the contract, to procure these necessary services and reduce the potential risk to the State.	A	8/9/2022	Marki Mascolo	8/10/2022
16	8140	Limitation_Liability_Request	33710-083022 VOS		P	9/22/2022	Alyssia Zamora	
17	8166	Limitation_Liability_Request	32110-3015 TeamMate Software - New Contract LOL		P	9/28/2022 0:00	Michael Porter	

**REPORT
MEMORANDUM OF UNDERSTANDING
(MOU)**

	A	B	C	D	E	F	G	H
	Number	SWC# / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
1								
358	357	65262	TBI Evidence Collection Kits	Mike Bentheimer	Tri Tech Forensics	TBI Evidence Collection Kits	5/13/2022	Added subitems to the Sexual Assault Evidence Collection kit that are required by law.
359	358	71527	Generator Maintenance at Bledsoe Co Corr. Complex	Mike Bentheimer	Clarke Power Services Inc	Generator Maintenance at Bledsoe Co Corr. Complex	4/1/2022	added additional quarterly and yearly generator maintenance lines for new generators
360	359	62027	Elevator Maintenance	Maya Carpenter	KONE Inc.	Elevator Maintenance	5/3/2022	Added wheelchair lift maintenance line item to allow servicing of wheelchair lift installed at Military facility.
361	360	72307	Vehicles	Mike Neely	Wilson Co Motors	Vehicles	7/1/2022	Updated models on light trucks
362	361	60043	ITA Learning Services	Sharon Pope	Learning Tree	It Academy Training Services	7/25/2022	Added option for when the participation does not meet the threshold of eight (8)
363	362	60935	fiResponse Analytic Software	Mike Bentheimer	Technosylva Inc	Provision of fiResponse System to coordinate firefighting efforts across the State and with federal agencies	6/20/2022	added Burn Permit implementation services as an add-on for the software
364	363	68691	Asset and Photolog	Kelly Johns	CycloMedia Technology Inc	Photolog images and data collection on routes and ramps throughout the State	8/8/2022	Adding extracting, reprocessing and reporting of the pavement condition data collected, specific to C.3 Data reporting
365	364	73706	Managed Service Provider (MSP)	Cami Howard	Covendis	MOU for Rate Card Adjustments	8/5/2022	Complete Rate Card adjustment
366	365	SWC221/63074, 74621	Tires	Mike Neely	S&S Firestone, Southern Tire Mart	Continental tires added	10/1/2022	Continental tires added
367	366	55112	Trash Pick-up Services	Cami Howard	Waste Management Inc of Tennessee	MOU for addition of TDOT location	7/21/2022	Two trash pickup locations for TDOT on I-40
368	367	75330	Travel Services	Ellen Lipinski	Duluth Travel Inc.	MOU for addition of booking by email option	8/26/2022	Added option to book by email
369	368	74063	Federal Funding Consulting	Ellen Lipinski	Accenture LLP	MOU for addition of GSA renewal rates	8/25/2022	Added GSA renewal rates for remaining contract term.
370	369	73976	Summer Road Maintenance	Erik Busby	Jones Bros Contracting, LLC	MOU for additional crushed stone/delivery lines	9/30/2022	Added lines for crushed stone region 3 and 4 as well as the haul charges