



**STATE OF TENNESSEE
PROCUREMENT COMMISSION**

3rd Floor, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

- AGENDA -

PROCUREMENT COMMISSION MEETING #045

THURSDAY, NOVEMBER 9, 2023

9:00 A.M. – 10:00 A.M.

3RD FLOOR TN TOWER/NASHVILLE ROOM AND TEAMS

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**MINUTES OF JUNE 21, 2023
MEETING**

MINUTES
PROCUREMENT COMMISSION MEETING #044
WEDNESDAY, JUNE 21, 2023, AT 2:00 P.M.
Nashville Room/TEAMS

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:

Bryan Chriske, Nicholas Edwards, Jennifer Pfeiffer, Eugene Neubert, Paul Krivacka, Jenny Young, Mary Ferrara

WebEx Attendance:

Christy Allen, Robin Upchurch, Randy Dean, Toni Stuart, Chadwick Nottingham, Kay Morgan, Kevin Krivacka, Leslie Hafner, Trey Norris, Judy Tribble

I. Call to Order:

Commissioner Branscom called the meeting to order and recognized that a quorum of Procurement Commission ("Commission") members was present. All members voted in favor – none opposed, whereupon the minutes were approved.

II. Minutes from January 19, 2023, Meeting:

Commissioner Branscom presented the January 19, 2023, minutes for approval. Chief Procurement Officer Mike Perry informed the committee that Bryan Chriske with the Comptroller's Office found corrections in the January 19, 2023, meeting minutes. Those were presented as follows:

JUNE 21, 2023

PROCUREMENT COMMISSION MEETING
CORRECTION TO JANUARY 19, 2023, MEETING MINUTES

Bryan Chriske brought to my attention that January 19, 2023, Procurement Commission meeting minutes had a typo that has now been corrected. There were added words from item #10 added to item #11.

Incorrect:

(11) Contractor Hosted Data Update

Mr. Bartels presented the following point regarding the Contractor Hosted Data Update proposal:

This proposal modifies the Section E. "Contractor Hosted Services Confidential Data, Audit, and Other Requirements" to align with recent changes in federal standards for government data as detailed in the Federal Information Processing Standards Publication. It adds optional language to the GR and GG Templates for the following purpose:

To ensure that grant recipients do not enroll members or officials in a state-sponsored health insurance plan unless the Grantee qualifies as a governmental or quasi-governmental entity under federal law applicable to ERISA.

Corrected:

(11) Contractor Hosted Data Update

Mr. Bartels presented the following point regarding the Contractor Hosted Data Update proposal:

This proposal will modify the Section E. "Contractor Hosted Services Confidential Data, Audit, and Other Requirements" to align with recent changes in federal standards for government data as detailed in the Federal Information Processing Standards Publication.

Comptroller Mumpower moved the adoption of the January 19, 2023, Procurement Commission meeting minutes as presented. Commissioner Bryson seconded the motion. All members voted in favor – none opposed.

III. Consent Agenda Items.

Commissioner Branscom presented the Consent Agenda items (1) through (9) for approval.

Mr. Paul Krivacka, Director of Legal and Compliance, Central Procurement Office, stated that items (1) through (9) 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, Commissioner Bryson made a motion to approve Consent Agenda items (1) through (9). Comptroller Mumpower seconded the motion. All members voted in favor – none opposed.

IV. New Business:

Mr. Krivacka presented the following New Business agenda items:

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

(1) Protest Procedures

Mr. Krivacka summarized the following points regarding the Protest Procedures proposals:

- This proposal will allow for electronic filing of protest documents and to update the Protest Procedures to align with recent changes adopted by Public Chapter No. 113.

Seeing no discussion on agenda items (1), Commissioner Bryson made a motion to approve the Protest Procedures as presented. The motion was seconded by Comptroller Mumpower. All members voted in favor – none opposed.

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

(2) Prohibited Contract Terms – NEW

Mr. Krivacka summarized the following points regarding the Prohibited Contract Terms – NEW:

- This proposal will add a new contract term to put Contractors on notice that certain contract terms are prohibited by state statute.

Commissioner Bryson clarified that this proposal is basically stating that the State will comply with the law (PC 113). Mr. Krivacka replied yes.

Seeing no further discussion on agenda item (2), Comptroller Mumpower made a motion to approve Prohibited Contract Terms – NEW as presented. The motion was seconded by Commissioner Bryson. All members voted in favor – none opposed.

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

(3) Procurement Procedures Manual of the CPO, § 5.13.4

Mr. Krivacka presented the following point regarding the Procurement Procedures Manual of the CPO, § 5.13.4 proposal:

- This proposal will add additional instructions to the Procedures Manual for instances when a respondent identified in the Notice of Intent to Award as being the best evaluated, is subsequently found to be non-responsive.
- This proposal will require the Solicitation Coordinator to notate the reasons for bypass in the Procurement File and to re-issue a revised Notice of Intent to Award.

Seeing no discussion on agenda items (3), Commissioner Bryson made a motion to approve the Procurement Procedures Manual of the CPO, § 5.13.4 as presented. The motion was seconded by Comptroller Mumpower. All members voted in favor – none opposed.

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

(4) Policy Number 2013-005, Certification of Goods and Services Recommended by the Central Nonprofit Agency or TRICOR Policy and Procedures:

Mr. Krivacka presented the following point regarding the Policy Number 2013-005, Certification of Goods and Services Recommended by the Central Nonprofit Agency or TRICOR Policy and Procedures proposal:

- This proposal will update the Certification Policy to better align with updated statutory references and procedures.

Seeing no further discussion on agenda items (4), Commissioner Bryson made a motion to approve Policy Number 2013-005, Certification of Goods and Services Recommended by the Central Nonprofit Agency or TRICOR Policy and Procedures as presented. The motion was seconded by Comptroller Mumpower. All members voted in favor – none opposed.

V. Reports:

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

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

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

VI. Other Business:

Consent to Cancel the July 20, 2023, Procurement Commission Meeting:

Comptroller Mumpower, Commissioner Branscom, and Commissioner Bryson verbally consented to cancel the July 20, 2023, Procurement Commission meeting. The next meeting will be on August 17, 2023. A motion was made by Comptroller Mumpower and was seconded by Commissioner Bryson. All members voted in favor – none opposed.

VII. Adjournment:

Seeing no other business, a motion for adjournment was made by Commissioner Bryson. The motion was seconded by Comptroller Mumpower. All members voted in favor – none opposed, whereupon the June 21, 2023, Procurement Commission meeting was adjourned.

PROCUREMENT COMMISSION AGENDA ITEMS OVERVIEW

Overview of Agenda Items

Consent Agenda Items:

1. Prohibited Contract Terms:
 - A new contract term, “Prohibited Contract Terms” was added at the June 21, 2023 Procurement Commission meeting.
 - At the time, the public chapter had yet been codified. This change is to update the reference in the contract templates and models from [Public Chapter No. 113](#) to Tenn. Code Ann. § 12-3-515.
2. Attestation:
 - To help facilitate the collection of Attestations (regarding the services of an illegal immigrant in the performance of State contracts) the Edison Supplier Portal will be updated to facilitate the electronic collection of the semi-annual attestations from Contractors.
 - This request modifies the contract term “Prohibition of Illegal Immigrants” to reference that the attestations are accessible through the Edison Supplier Portal.
3. No Cost Contract:
 - This request is to correct numbering in the No Cost Contract template. (In particular D.36. Prohibited Contract terms, should be D.29. Also, in the instructions, “Termination for Convenience” should be D.4. and the “Insurance” option should be D.24. to correspond with the template numbering).
4. RFP Cost Proposal:
 - This request removes the quotation marks from a sentence in the cost proposal as the sentence is referring generally to a particular section, but is not a direct quotation as indicated by the quotation marks.
5. RFQ Electronic Submittal
 - This change adds specific instructions to facilitate the electronic submission of RFQ responses (included in optional instructions).
 - Also minor clean up item, on the references attachment one of the "RFP" references should be RFQ.

New Business Agenda Items:

1. Protest Procedures
 - This request adds more explicit and bolded language around what happens if a protest is found by the protest committee to have violated TCA § 12-3-514 (and allowing the bond to be surrendered to the State).
2. RFP and RFQ (Mandatory Requirements)

- The requested change details responsibilities that are delegated to the Solicitation Coordinator in the RFP and RFQ processes.
- It is the Solicitation Coordinator’s responsibility to coordinate and facilitate all responsiveness determinations and calculations as to the best evaluated respondent.

3. Disclosure of Response Contents

- This request will add a notice on Solicitation Documents (i.e., ITB; RFQ; RFP) instructing respondents not to submit trade secrets in their responses to solicitations.

Request to consider Agenda Items #4 and #5 together:

4. Policy Number 2013-007 (Grant Management and Subrecipient Monitoring Policy and Procedures)

5. Grant Contract and Governmental Grant Contract Template Changes:

- The Department of Finance & Administration has determined that F&A Policy 03 is no longer necessary. This request would replace references to F&A Policy 03 with references to CPO Policy 2013-007 Grant Management and Subrecipient Monitoring Policy and Procedures as the CPO Policy will supersede F&A Policy 03. Also, minor corrections noticed by F&A in their review.
- This request will also amend the “Grantee Hosted Services Confidential Data, Audit, and Other Requirements” grant contract term to match the standard that was recently updated in the FA Template (Contract Hosted Term at section E.#.a.(2) related to the Federal Information Processing Standard version.

6. Build America, Buy America (“BABA”) Act - America Preference in Federal Financial Assistance Programs for infrastructure”.

- This request would add a new contract term related to the production of iron, steel, manufactured products and construction materials used in an infrastructure project under an award (see M-2-11).

Request to consider Agenda Items #7 and #8 together:

7. Statewide Payment Card Policy § 9.4.

- This request revises the Statewide Payment Card Policy and Procedures, CPO Policy 2015-010, at Section 9.4. Records Retention Requirements.
- The Public Records Commission recently approved (at its 9/28/23 meeting): (1) revision to SW RDA #23 covering P-Card documents; and, (2) addition of a new RDA, SW RDA #48 covering the issuance of P-Cards. For complete details please visit:
 - SW23 <https://rmd-rda.tnsos.net/node/35069>
 - SW48 <https://rmd-rda.tnsos.net/node/35837>

8. State Agency P-Card Procedures Model:

- This request makes a few changes to the State Agency Payment Card Procedures Model. Section 4, Records Retention Requirements has been updated to reflect the changes described above.
- Also, the email address for the Comptroller's Office has been updated as they have transitioned to a new email system. (This request will update the email address for procedures to be submitted for review and approval from the current email address to the new email address at: cpc@cotcpc.zendesk.com).
- Section 5. P-Card Program Roles and Responsibilities has been updated to mirror Cardholder Training requirements in CPO Policy 2015-010.

9. Pollution Liability Insurance:

- This request will add a new optional coverage type insurance to the FA Template for Pollution Liability Insurance.
- This type of insurance is generally recommended by the CPO Risk Manager when the contract involves the Contractor using and transporting chemicals, pesticides, and other types of pollution exposures.

10. Terms and Conditions for Purchase Orders Issued Under Agency LPAs:

- This proposed change adds additional terms and conditions that are commonly utilized by agencies under their LPA.

CONSENT AGENDA

PROHIBITED CONTRACT TERMS

REQUEST: Revise the following “Prohibited Contract Terms” in the FA, NC, and RV, and Edison configurator contract templates as follows:

D.#. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

ATTESTATION

REQUEST: Revise the Prohibition of Illegal Immigrants contract term in all applicable models and templates as follows:

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation by submitting to the State a completed Attestation (accessible through the Edison Supplier Portal) and included at Attachment **Reference**, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

ATTACHMENT REFERENCE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly.	
SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

NO COST CONTRACT

NO COST TEMPLATE (NC)

This No Cost Template is appropriate when the contract does not result in a pecuniary obligation between the State and the contracting party.

Procurement professionals shall adhere to this template with revisions only as instructions permit. Changes to this template require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office*.

Use of this template shall require an approved Special Contract Request.

Complete form fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name, amount, will/will not**) as indicated and with conforming font and color.

Complete summary cover sheet fields as indicated within the template.

Ownership/Control optional – procuring party's ownership/control.

Minority Business Enterprise (MBE): select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.

Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is:

- (A) African American, a person having origins in any of the black racial groups of Africa;
- (B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
- (C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (D) Native American, a person having origins in any of the original peoples of North America.

Woman Business Enterprise (WBE): select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

Service-Disabled Veteran Enterprise (SDVBE): select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and:

- (A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;
- (B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or
- (C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Disabled Owned Businesses (DSBE): select if a business owned by persons with disabilities, which means a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more persons with a disability; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more persons with a disability and whose management and under the control of one (1) or more persons with a disability.

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

Non-Minority/Disadvantaged if the contractor is not \geq 51% owned or controlled by minority or disadvantaged persons & is not a small business.

- For additional guidance, please visit: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

A summary cover sheet properly completed and in accordance the template is required for every copy of the contracting document.

PREAMBLE

Add additional information only if necessary.

A. SCOPE OF SERVICES

Draft the scope of services to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the service and deliverable requirements and all related specifications.

It is the responsibility of the contracting agency to adequately draft a scope of services, and oversight examiners will rely on the contracting agency head's signature on the contract document as certification and assurance that the proposed scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.

B. TERM OF CONTRACT

Do NOT route a contract for approval after the Effective Date.

Procurement professionals should plan procurements and draft the contract with a Term of no longer than sixty (60) months, including extensions or renewals. A contract requiring a Term greater than sixty (60) months shall require an approved Rule Exception Request.

Option: Term Renewal or Extension

To reserve the right to extend the Contract's Term, change the designation of the paragraph under B. to B.1. and add one or both of the following sections, revising the length of the extension period(s) as appropriate.

B.#. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **number (#)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

B.#. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.

D. STANDARD TERMS AND CONDITIONS

Do NOT add terms and conditions to section D (additional, necessary terms and conditions may be added to the section E, Special Terms and Conditions).

Termination for Convenience

Specify whether the termination is immediate, increase, or decrease notice requirement days as appropriate.

Option: Bilateral Termination

Replace the standard Termination for Convenience section with the following bilateral termination provision only if the contracting agency can justify that the bilateral provision is in the best interest of the State.

D.4. Termination for Convenience. The Contract may be terminated by either Party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract. Upon such termination, neither the State nor the Contractor shall have a right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Nondiscrimination

Replace the section with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

D.#. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the basis of any classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

HIPAA Compliance

Contractors: The Contractor must execute a business associate agreement (“BAA”) if: (a) the contracting State Agency is a “covered entity” as defined by the Privacy Rules; and (b) the Contractor will provide services to the contracting State Agency that involve Contractor’s access to protected health information (“PHI”) as defined by the Privacy Rules.

Subcontractors: The Contractor must execute a BAA with a subcontractor if the subcontractor creates, receives, maintains, or transmits PHI on behalf of the Contractor.

Insurance Options

Commercial General Liability, Workers’ Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request (Risk) is required for any deviations from insurance requirements, including any request to remove the Commercial General Liability and Workers’ Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

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

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

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. An approved Rule Exception Request (Risk) is required to use this option. Please consult the CPO Risk Manager if you have any questions.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers’ compensation and employer liability insurance in the amounts required by appropriate state statutes.

- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

Option 2: Professional Liability Insurance

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

D.#.

d. Professional Liability Insurance

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

Option 3: Low Risk Insurance for Independent Contractors

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by

CPO, replaces the D.24. Insurance provision in its entirety. An approved Rule Exception Request (Risk) is required to use this option. Please consult the CPO Risk Manager if you have any questions.

D.24. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

The insurance obligations under this Contract shall be: 1—all the insurance coverage and policy limits carried by or available to the Contractor; or 2—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds or policies in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverage(s) and policy limits.

a. Automobile Liability Insurance

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

E. SPECIAL TERMS AND CONDITIONS

Add the following sections as indicated and in the order below. Afterwhich, add other special terms and conditions sections as appropriate, provided that none conflict with state interests or standard contract provisions.

Wherever instructions direct legal counsel involvement, compliance will be assumed.

Confidentiality of Records

As appropriate, add the following section or an alternative recommended by the contracting agency legal counsel.

E.#. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the

State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

State Furnished Property

Add the following section as appropriate.

E.#. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

Incorporation of Additional Documents

Revise this section as appropriate.

Prohibited Advertising or Marketing

Add the following section as appropriate.

E.#. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that the Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this section shall survive the termination of this Contract.

Environmental Tobacco Smoke

Add the following section as appropriate.

E.#. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

Lobbying

Add the following section as appropriate.

- E.#.** Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

Contractor Commitment to Diversity

Add the following section as appropriate (typically only in standard RFP *pro forma* contracts).

- E.#.** Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-**NUMBER** (Attachment **REFERENCE**) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.

Performance Bond

A Performance Bond requirement is generally not recommended for several reasons. A performance bond can be very expensive and difficult for any business to obtain, and the requirement makes it virtually impossible for small and minority businesses to seek contract award. A performance bond is not a usual cost of doing business, and the cost associated with meeting the requirement will most certainly be passed directly to the state. Consequently, the requirement will undoubtedly increase state cost. Finally, the benefit purported to result from a performance bond is highly questionable. This type of bond can be difficult to enforce, and the state has little or no experience in enforcing such obligations. A performance bond is a poor insurance policy. There are much better methods for the state to ensure contractor performance (*e.g.*, scope of service sufficiently detailed to ensure contractor accountability and results; payment methodology involving contingent, incremental payments; a retention of final payment provision; liquidated damages; and not least, sound contract management).

Add the following section only as appropriate, and Provided That the contracting agency legal counsel: (1) drafts the referenced, state-prescribed, bond form; and (2) makes a determination that the bond requirement will be reasonably and legally enforceable under the subject contract as drafted.

E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to **Written Dollar Amount (\$Number)**. The Contractor shall submit the bond no later than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at Attachment **Reference** hereto), and the bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for:

- a. the Contract term and all extensions thereof; or
- b. the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a new performance bond in the amount of **Written Dollar Amount (\$Number)** covering each subsequent calendar year of the contract period. In which case, the Contractor shall provide such performance bonds to the State no later than each December 10th preceding the calendar year period covered beginning on January 1st of each year.

Failure to provide to the State the performance bond(s) as required herein prior to the Contract start date and, as applicable, no later than December 10th preceding each calendar year period covered beginning on January 1st of each year, shall result in contract termination. The Contractor understands that the stated amount of the performance bond required hereunder shall not be reduced during the contract period for any reason.

Copyrights and Patents

Add the following as appropriate if recommended by the contracting agency legal counsel.

E.#. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

Partial Takeover

Add the following or a similar section as appropriate if recommended by the contracting agency legal counsel.

E.#. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the

amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Disclosure of Personal Identity Information

Add the following section as appropriate.

E.#. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

Transfer of Contractor's Obligations

Add the following section as appropriate.

E.#. Transfer of Contractor's Obligations.

a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the "New Entity".

b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include:

- i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
- ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of,
 - (1) Debt;
 - (2) Assets;
 - (3) Liabilities;
 - (4) Cash flow
 - (5) Percentage of the total revenues of the company that are represented by this Contract;
 - (6) The most recent annual financial reports;
 - (7) The most recent annual financial reports filed with government agencies, if applicable.
- iii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
 - (1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for

- fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,
- (2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
 - iv. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.
- c. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of incorporation, and other documentation required to effectuate the transfer.
- d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
- i. has been debarred from State or Federal contracting in the past five years
 - ii. has had a contract terminated for cause by the State of Tennessee within the past five years.
- The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
- f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Ann. § 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.

Contractor Hosted Services Requirements and Confidential Data Options

General Instructions:

If the contract will allow a Contractor or Subcontractor to host State services or State data in the cloud (e.g., Software as a Service (SaaS), Infrastructure as a Service (IaaS), Platform as a Service (PaaS)), then follow the instructions as described in the various options below. Include all applicable sections, renumbering as may be appropriate.

Section E.#.a: Confidential State Data

If the Contractor or Subcontractor will host data that is deemed confidential by State or Federal statute or regulation, or process data per the payment card industry (Confidential State Data), including data in transit, include Section E.#.a. If there is any type of Confidential State Data, also include the standard language covering Disclosure of Personally Identifiable Information (PII) from the Section E options provided in the FA Template.

Section E.#.b and c. Minimum Requirements and Comptroller Audit Requirements

Include Section E.#.b as minimum Strategic Technology Solutions (STS) requirements and Section E.#.c as minimum Comptroller audit requirements for all contracts where the Contractor or any Subcontractors will host State services or State data in the cloud (e.g., SaaS, IaaS, PaaS).

Section E.#.e: ACFR or Single Audit Requirements

Add Section E.#.e as an additional Comptroller audit requirement, if the Contractor or Subcontractor will host services that store or process State financial or other data that (1) is used for reporting through the State's Annual Comprehensive Financial Report (ACFR) or (2) is used for demonstrating compliance with the requirements of Title 2, Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). The Contractor must provide to the State a System and Organization Controls (SOC) 1 Type II or SOC 2 Type II audit report annually. The Contractor must also verify that all Subcontractors, including data center vendors, successfully complete and provide to the State an annual SOC Type II audit report. Additionally, the State should consider obtaining and reviewing the latest available SOC report for the Contractor and Subcontractor prior to the awarding of the Contract. This requirement should be added to the solicitation Technical Response requirements.

If Section E.#.e, ACFR or Single Audit Requirements is included, remove Section E.#.a.3 unless the contract will involve CJIS data or FTI data, which requires replacing E.#.a.3 as described in the options below. In this case, both a SOC Type II audit report and FEDRAMP authorization are required.

Please direct any questions regarding these requirements to STS, Security Area, or the Comptroller's Office, Office of Management Services. Direct any questions regarding the types of Confidential State Data to STS, Security Area.

Criminal Justice Information Services ("CJIS") Data

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

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

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

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

General Requirements

<p>E.#. Contractor Hosted Services Confidential Data, Audit, and Other Requirements</p> <p>a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:</p> <p>(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.</p> <p>(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 or 140-3 (current applicable version) validated encryption technologies. The State shall control all access to encryption keys. The Contractor shall provide installation and maintenance support at no cost to the State.</p> <p>(3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program</p>

("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.

- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

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

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[NUMBER OF HOURS/MINUTES]**

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

Option: Minimum Requirements

Delete and Replace the standard (b)(1), referring to a URL, if the State’s Enterprise Information Security Policy will be included as a Contract Attachment.

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies. The State’s Enterprise Information Security Policies document is attached to this Contract at Attachment **Reference**.

Option: ACFR or Single Audit Requirements

If the contract will involve applications that store or process State financial or other data that is used for reporting through the State’s Annual Comprehensive Financial Report (ACFR) or for demonstrating compliance with Uniform Guidance, include Section E.#.e.

- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor’s and Subcontractor’s annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor’s opinion in the most recent audit report.

No additional funding shall be allocated for these audits as they are included in the Maximum Liability of this Contract.

Option: Federal Risk and Authorization Management Program (“FedRAMP”)

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

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

Option: Federal Tax Information (“FTI”) Data

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

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

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

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

Contractor shall meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges (“MARS-E”) controls.

Option: Payment Card Industry (“PCI”) Data

If the contract will involve PCI data, include all of the General Requirements above, and add the following as section E.#.a.(5):

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

Drug-Free Workplace.

Add the following Section as appropriate:

- E. #. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

Option: Americans with Disabilities Act.

Add the following section as appropriate.

- E. #. Americans with Disabilities Act. The Contractor must comply with the Americans with Disabilities Act (ADA) of 1990, as amended, including implementing regulations codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities," and any other laws or regulations governing the provision of services to persons with a disability, as applicable. For more information, please visit the ADA website: <http://www.ada.gov>.

Tennessee Department of Mental Health and Substance Abuse Services

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Sections as appropriate:

- E. #. Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and workplace interaction. Contractor employees shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards pertaining to Contractor's profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor's employees, including new hires, on at least an annual basis. Contractor's code of conduct shall prohibit Contractor, its officers, directors, and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.

- E. #. Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.

- E. #. Rule 2 Compliance. The State and the Contractor shall comply with the obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR §§ 2.1, *et seq.* ("Rule 2").

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 during the Term of this Contract.
- c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.

- E.#.** Prohibitions on Use of Federal Substance Abuse Block Grant Funds. Pursuant to federal law, Contractor shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant to supplant any other funds available for the goods or services provided under this Contract. Contractor shall not use any federal Substance Abuse Prevention and Treatment Block Grant funds under this Contract for any of the following purposes:
- a. to provide inpatient hospital or inpatient community mental health services;
 - b. to make cash payments to intended recipients of health services;
 - c. to purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or facility; or purchase major medical equipment;
 - d. to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
 - e. to provide financial assistance to any entity other than a public or non-profit entity;
 - f. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or
 - g. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test and post-test counseling.

License.

If the contract will involve the State granting a license, e.g., use of the State of TN registered trademark, add the following Section as appropriate:

- E.#.** License. State hereby grants to Contractor the non-exclusive, non-transferable license, privilege and authority to use the Property in connection with the project as approved, set out in this Contract **at Section A/Attachment Reference** all other rights being reserved to State for the Term of this contract as provided below.
- a. Property. The "Property" licensed **[Insert word portion of mark, if any]** mark:
[Insert picture of mark]
 - i. Exclusivity. None.
 - ii. Territory. Worldwide.
 - b. Term. Contractor shall begin to use the Property as set out in **Contract Section A/Attachment Reference** and shall cease upon termination of the Contract unless otherwise agreed to herein.

- c. Use Limitations and Collateral Materials. The Property may be used on signs, promotional materials, marketing materials, Contractor’s visitor website, and/or as otherwise set out in **Contract [insert Contract #], Section A/Attachment Reference**. The License also includes the right to create and use promotional, advertising and packing material in connection with marketing of the services. In advertising and promoting with use of the Property, Contractor shall seek prior approval as set out in this Section. The Contractor does not have any rights to use the Property on any consumer products or merchandise rights.
- d. Use of Signage and Other Materials. Upon expiration of this License, Contractor shall cease use of the Property on current materials. If this License is terminated earlier than contemplated by this Contract, Contractor and State shall negotiate in good faith the wind up of the License.
- e. Sub-licensing. Sub-licensing is not allowed.
- f. Approvals. All use of the Property shall require State’s prior written approval. Failure to obtain approvals at all stages shall be cause for termination of Contractor’s use of the Property, only, and not the remainder of the Contract unless failure to use the Property results in a material breach.
- g. Intellectual Property Notices. The Property shall always be displayed with the “®” symbol and the following notice shall appear, where space permits, on all marketing or collateral materials bearing the Property:
- [Insert word portion of Mark, if any]** is a registered trademark and is used under license to the Contractor.
- h. Exclusive Property of State. The Property is and shall remain the exclusive property of State and all rights arising from the use of the Property, shall inure to State. Contractor acknowledges that it does not now have and in the future will not assert any right, title or interest of any kind or nature whatsoever in or to the Property nor will it change or contest any of State’s rights therein.
- i. Royalty Rate. This License shall be royalty free.

SIGNATURES

Draft the contract so that the signature section immediately follows the previous section text separated by only one blank line. Do NOT insert an arbitrary page break prior to the signature section.



NO COST CONTRACT

(no cost contract, involving no monetary obligation between the parties, with an individual, business, non-profit, or government entity of another state or country)

Begin Date	End Date	Agency Tracking # -	Edison ID
Contractor Legal Entity Name			Edison Vendor ID (optional)
Service Caption			
Ownership/Control <input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Service-Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Disabled Owned Businesses (DSBE) <input type="checkbox"/> Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:			
Selection Method & Process Summary (mark the correct response to confirm the associated summary)			
<input type="checkbox"/> Competitive Award	Describe the competitive award process used. Include Solicitation Number, if applicable:		
<input type="checkbox"/> Other	Describe the non-competitive award process used and submit a Special Contract Request with the applicable method described, in addition to selecting the No Cost contract type.		
<i>CPO USE - NC</i>			

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
STATE AGENCY NAME
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, **State Agency Name** ("State") and **Contractor Legal Entity Name** ("Contractor") is for the provision of **Scope of Service Caption**, as further defined in the "SCOPE OF SERVICES." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE OF SERVICES:

A.#. Specify the services, deliverables, technical specifications, and delivery requirements that the contractor must provide and meet (sufficient detail is required to ensure contractor accountability and definitive results).

B. TERM OF CONTRACT:

This Contract shall be effective on **DATE** ("Effective Date"), and extend for a period of **number (#) months** after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

There shall be no cost to the State for the performance of services under this Contract.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title

State Agency Name

Address

Email Address

Telephone # **Number**
 FAX # **Number**

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
 Telephone # **Number**
 FAX # **Number**

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.6. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part of the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.7. Conflicts of Interest. The Contractor warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.8. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.9. Prohibition of Illegal Immigrants. The requirements of Tennessee Code Ann. §12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation by submitting to the State a completed Attestation (accessible through the Edison Supplier Portal) and included at Attachment **Reference**, hereto, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tennessee Code Ann. § 12-3-309 for acts or omissions occurring after its effective date. This law requires the Chief Procurement Officer to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.10. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.14. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the Parties that such Parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.16. State Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise.
- D.17. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.18. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.19. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tennessee Code Ann. §§ 9-8-101-408.
- D.20. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings,

representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.21. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.22. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.23. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance of this Contract, these items shall govern in the order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.24. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

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

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars (**\$1,000,000**) per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

D.25. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

D.26. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations

regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this section shall survive the termination of the Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another such document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.27. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. § 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.28. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.29. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

Add Appropriate and Contingently Required Special Terms & Conditions (refer to instructions for details)

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE **DATE**

ATTACHMENT REFERENCE**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

RFP COST PROPOSAL

REQUEST: **Revise the RFP Template at Attachment 6.3., Cost Proposal & Evaluation Guide as follows:**

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

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

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

RFQ ELECTRONIC SUBMITTAL

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

- Page xiii delete “RFP § 5.1. NUMBER” and replace with “RFQ § 5.1. NUMBER”
 - Page 24 delete “required by this RFP;” and “replace with required by this RFQ;”
 - Add option for email submission directions in RFQ.
-

Option: Digital Submittal of Responses.

Delete and replace RFQ § 3.3.2. Response Format with the following if Respondents should submit responses as a digital document. Please note that all electronic records must be maintained in accordance with the Secretary of State’s Record Management Division’s and the Department of Finance & Administration’s Strategic Technology Solution’s policies.

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

3.3.2.1. Technical Response

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

“RFQ #NUMBER TECHNICAL RESPONSE ORIGINAL”

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

“RFQ #NUMBER TECHNICAL RESPONSE COPY”

If not emailed, then the sealed customer references will be the only paper documents.

3.3.2.2. Cost Proposal:

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

“RFQ #NUMBER COST PROPOSAL”

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

3.3.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

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

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

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

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

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

“RFQ # NUMBER SEALED RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”

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

3.3.4. E-mail Submission

3.3.4.1. Technical Response

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

“RFQ #NUMBER TECHNICAL RESPONSE”

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

3.3.4.2. Cost Proposal:

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

“RFQ #NUMBER COST PROPOSAL”

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

3.3.4.3. For e-mail submissions, the Technical Response and Cost Proposal documents must be dispatched to the Solicitation Coordinator in separate e-mail messages. For digital

media submissions, a Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

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

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

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

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

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

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

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

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

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

NEW BUSINESS

PROTEST PROCEDURES

Complete the form fields and follow, replace, or otherwise address red instructional text. Delete this paragraph before distributing the completed document to respondents.

PROTEST PROCEDURES AND PROTEST BOND REQUIREMENTS

The Open File Period for this solicitation begins on **DATE** and ends on **DATE**. Any protest of this solicitation is due via mail or hand-delivery by 4:30 p.m. CT on **DATE** to the Central Procurement Office at the address listed below:

Michael F. Perry
Chief Procurement Officer
-and-
Paul Krivacka
Director of Compliance and Lead Attorney
Central Procurement Office
Dept. of General Services
WRS Tower, 3rd Floor
312 Rosa L. Parks Blvd.
Nashville, TN. 37243-1102
Tele: (615) 741-1035
Fax: (615) 741-0684

Any respondent who has submitted a response to [insert information identifying the solicitation] and who claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract may submit a protest to the Chief Procurement Officer. Under Tenn. Code Ann. § 12-3-514, any protest of this solicitation must:

- Be submitted electronically to: TN.CPO.Protests@tn.gov or by hard-copy if electronic transmission is unavailable;
- Be submitted within seven (7) calendar days after the day on which the notice of award or notice of intent to award is issued, whichever occurs first;
- Any issues raised by a protesting party after the seven-day period to protest shall not be considered as part of the protest, as required by the rules of the solicitation.
- Include and describe all grounds for the protest; and
- Include a protest bond payable to the State in the amount identified below *unless* the protest bond exemption under Tenn. Code Ann. § 12-3-514(g) applies and the protesting party provides an electronic or hard-copy petition for an exemption for solicitations that are less than \$1 million.

As established by Tenn. Comp. R. & Regs. 0690-03-01-.12(2), the following are the sole grounds for a protest:

- The contract award was arbitrary, capricious, an abuse of discretion, or exceeded the authority of the awarding entity;
- The procurement process violated a constitutional, statutory, or regulatory provision;
- The awarding entity failed to adhere to the rules of the procurement as set forth in the solicitation and this failure materially affected the contract award;
- The procurement process involved responses that were collusive, submitted in bad faith, or not arrived at independently through open competition; and

- The contract award resulted from a technical or mathematical error during the evaluation process.
- If provided in the solicitation, a protest that is based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the written “Questions & Comments Deadline.”
- A protest based upon the cancellation, in whole or in part, of a solicitation is not actionable and will not be considered by the Chief Procurement Officer, pursuant to **Pub. Ch. No. 113**.

As determined by the Chief Procurement Officer, the amount of the protest bond shall be:

- Five percent (5%) of the lowest bid or cost proposal evaluated;
- Five percent (5%) of the maximum liability or estimated maximum liability provided in the solicitation;
- Five percent (5%) of the estimated maximum revenue, if the solicitation, award, or proposed award is for a contract in which the State receives revenue; or
- For no-cost contracts, an amount determined by the Chief Procurement Officer.

The protest bond amount required for this solicitation is number dollars (\$ #).

Upon the Chief Procurement Officer’s receipt of a protest and protest bond, a stay of the solicitation, proposed award, or award will go into effect until the protest is resolved in accordance with Tenn. Code Ann. § 12-3-514.

The protest bond shall be in form and substance acceptable to the state and shall be surrendered to the state after the protesting party has had an opportunity to oppose the payment of the protest bond and after a finding by the protest committee that:

1. **The protest was signed, before or after appeal to the chief procurement officer or protest committee, in violation of Tenn. Code Ann. § 12-3-514(c);**
2. **The protest has been brought or pursued in bad faith;**
3. **The affected state agency has suffered damages resulting in a loss of funding, increased expenditures, or a disruption in services; the protest was filed in bad faith or in violation of Tenn. Code Ann. § 12-3-514(c); and the protest was not upheld;**
4. **The protest did not state on its face a valid basis for protest; or For any other reason approved by the protest committee.**

Protest Bond Example

The following is an example of a protest bond whose form and substance are acceptable to the State of Tennessee Central Procurement Office:

PROTEST BOND

The surety company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. Bonds shall be certified and current Power-of-Authority for the Surety’s Attorney-in-Fact attached.

KNOW ALL BY THESE PRESENTS:

That we,

(Name of protesting party)

(Address of protesting party)

as the party filing a protest of the State of Tennessee’s determination(s) regarding a solicitation, an award, or a proposed award of a contract, (hereinafter called the “Protesting Party”), and

(Name of surety)

(Address of surety)

as surety, (hereinafter called the “Surety”), do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee (“State”) in the penal sum of written amount (\$ number) for payment of which we bond ourselves, our heirs, our personal representatives, our successors and our assignees, jointly and severally.

THE CONDITION OF THIS BOND IS THIS:

WHEREAS, the State has issued [solicitation name] (Solicitation No. #);

AND, the Protesting Party, as an entity that has submitted a response to Solicitation No. #, claims to be aggrieved in connection with the solicitation, award, or proposed award of a contract;

AND, the signature of an attorney or the Protesting Party on a protest or other document constitutes a certificate by the signer that the signer has read the document and to the best of the signer’s knowledge, information, and belief, formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

AND, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protesting Party posts a protest bond, the Protesting Party does file this protest bond payable to the State with a notice of protest regarding the procurement process;

AND, the State shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination of the protest by the chief procurement officer;

AND, if the Protesting Party appeals the chief procurement officer’s determination to the protest committee, the chief procurement officer shall hold the protest bond until instructed by the protest committee to either keep the bond or return it to the Protesting Party.

NOW, THEREFORE, this bond shall remain in full force and effect and shall be immediately payable to the State after the Protesting Party has had an opportunity to oppose the payment of this bond and a finding by the protest committee that:

1. The protest or other document was signed, before or after appeal to the chief procurement officer or protest committee, in violation of Tenn. Code Ann. § 12-3-514(c);
2. The protest has been brought or pursued in bad faith;
3. The affected state agency has suffered damages resulting in loss of funding, increased expenditures, or a disruption in services; the protest was filed in bad faith or in violation of Tenn. Code Ann. § 12-3-514(c); and the protest was not upheld;
4. The protest does not state on its face a valid basis for protest; or
5. For any other reason approved by the protest committee.

Otherwise, this bond shall be null and void.

IN WITNESS WHEREOF, the Protesting Party and Surety have executed this instrument and each has affixed its name and signature by its duly authorized officers, on this

_____ day of _____ in the year _____.

WITNESS:

(Name of Protesting Party)

(Name of Surety)

(Authorized signature of Protesting Party)

(Signature of attorney-in-fact)

(Name of signatory)

(Name of attorney-in-fact)

(Title of signatory)

(Surety’s Tennessee license number)

**RFP AND RFQ
(MANDATORY REQUIREMENTS)**

REQUEST: Revise the RFP and RFQ Templates as follows:

RFP Template:

- 5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A— Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Solicitation Coordinator will review the response and determine whether:
- a. the response adequately meets RFP requirements for further evaluation;
 - b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
 - c. the State will determine the response to be non-responsive to the RFP and reject it.

5.3. Contract Award Process

- 5.3.1 The Solicitation Coordinator will review the Proposal Evaluation Team determinations and scores for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The Solicitation Coordinator will determine the apparent best-evaluated Response using the scoring provided by the Proposal Evaluation Team. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the Solicitation Coordinator must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.

TECHNICAL RESPONSE & EVALUATION GUIDE

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

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

RFQ Template:

- 4.8.3. The State will review the response evaluation record and any other available information pertinent to whether or not each respondent is responsive and responsible. If the Solicitation Coordinator identifies any respondent that appears not to meet the responsive and responsible thresholds such that the team would not recommend the respondent for potential contract award, this

determination will be fully documented for the record. ("Responsive" is defined as submitting a response that conforms in all material respects to the RFQ. "Responsible" is defined as having the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.6. Contract Award

- 5.6.1. The Solicitation Coordinator, will determine the apparent best-evaluated response using the scoring provided by the Proposal Evaluation Team. (To effect a contract award to a Respondent other than the one receiving the highest evaluation score, the Solicitation Coordinator must provide written justification and obtain written approval of the Chief Procurement Officer and the Comptroller of the Treasury.)

TECHNICAL RESPONSE & EVALUATION GUIDE

All Respondents must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). All Respondents must also detail the response page number for each item in the appropriate space below.

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

DISCLOSURE OF RESPONSE CONTENTS

REQUEST: Revise the “Disclosure of Response Contents” term in the RFP and RFQ Templates as follows:

4.8. Disclosure of Response Contents

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Respondents are cautioned not to provide any materials in response to this RFP that are trade secrets, as defined under Tenn. Code Ann. § 47-25-1702 and any other applicable law. By submitting a response to this RFP, the respondent acknowledges and agrees that the State shall have no liability whatsoever for disclosure of a trade secret under the Uniform Trade Secrets Act, as provided at Tenn. Code Ann. § 47-25-1701-1709, or under any other applicable law. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

RFQ Template:

4.4. Disclosure of Response Contents

- 4.4.1. All materials submitted to the State in response to this solicitation become property of the State of Tennessee. Respondents are cautioned not to provide any materials in response to this RFP that are trade secrets, as defined under Tenn. Code Ann. § 47-25-1702 and applicable law. By submitting a response to this RFP, the respondent acknowledges and agrees that the State shall have no liability whatsoever for disclosure of a trade secret under the Uniform Trade Secrets Act, as provided at Tenn. Code Ann. § 47-25-1701-1709, or under any other applicable law. Selection for award does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full contents and associated documents submitted in response to this request will become open to public inspection in accordance with the laws of the State of Tennessee. Refer to RFQ § 2, Schedule of Events.
- 4.4.2. The RFQ responses will be available for public inspection only after the completion of evaluation of the RFQ or any resulting solicitation which this RFQ becomes a part of, whichever is later.

**POLICY NUMBER 2013-007
(GRANT MANAGEMENT AND
SUBRECIPIENT MONITORING POLICY
AND PROCEDURES)**

Policy Number 2013-007
Central Procurement Office
Grant Management and Subrecipient Monitoring Policy and Procedures

Effective: May 28, 2013
Last Amended: November 9, 2023
Prepared by: The Central Procurement Office of the State of Tennessee

1. Purposes.

To provide guidance to assist State Agencies to determine a counter party's status as a Contractor, Recipient, or Subrecipient.

To provide uniformity in the reporting of, and controls over, the expenditure of Grant funds in connection with the delivery of services by Recipients and Subrecipients.

To establish guidelines for Recipient and Subrecipient monitoring by Grantor State Agencies.

2. Scope.

This Policy applies to all State Agencies that award Federal or State Grants to Recipients or Subrecipients. Direct Appropriation Grants are exempt from this Policy.

3. Definitions.

For purposes of this Policy, the following terms have the meanings described below:

“Central Database” – means the database established and required by Tenn. Code Ann. § 4-56-110, which requires the collection and storage of information regarding Recipients and Subrecipients for monitoring purposes.

“Central Procurement Office” - means the State office established and empowered by Tenn. Code Ann. § 4-56-104.

“Chief Procurement Officer” - means the official as defined by Tenn. Code Ann. § 4-56-104.

“Cognizant State Agency” - means the State Agency whose funds comprise the greatest percentage of Grants received by a Grantee as determined by the Central Procurement Office.

“Contract” - means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued. The term “Contract” shall also have the meaning ascribed to it in 2 CFR § 200.1.

“Contractor” – means an entity that receives a Contract as defined in this Policy and in the

U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

“Cost Allocation Plan”- means the documented methodology of distributing to the benefitted program cost which benefit more than one program or cost objective and can not be directly assigned to a specific award or activity.

“Direct Appropriation Grant” - means a grant listed on the Department of Finance and Administration Division of Budget's annual direct appropriation list.

“End of Fiscal Year Form” – means the form that captures information related to each Grantee's end of fiscal year figures.

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

“Federal Grant” -means a Grant that is funded in whole or in part through federal funds.

“Grant”- means any grant of money, loans, or non-cash assistance awarded to the State or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity, to support a program authorized by law. A Grant cannot be used for the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such a Grant that should otherwise be provided on a competitive basis.

“Grant Budget”- means a budget itemizing one or more specific activities or purposes under the Grant and the maximum amounts a Grantee may be reimbursed.

“Grant Contract” – means the duly authorized and legally binding written agreement by and between the State of Tennessee and Recipient or Subrecipient that contains the terms and conditions governing the parties' duties and responsibilities with respect to a Grant. A Grant Contract does not include a Contract for the purchase of goods or services for the State of Tennessee's own use or consumption.

“Grantee”- means the person or entity receiving a Grant as a Recipient or Subrecipient.

“Grantor State Agency”-means a State Agency that provides a Grant to a person or entity.

“Information for Audit Purposes Form” – means the form that captures information about Recipients and Subrecipients for the purpose of monitoring State and Federal audit requirements

“Policy” - means Policy Number 2013-007 of the Central Procurement Office.

“Recipient” - means a Grantee that is a recipient of a Grant. The term Recipient does not include a Subrecipient.

“State”- means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“State Grant” - means a Grant that is funded exclusively through State funds.

“Subrecipient”- means a non-federal entity that receives a Grant from a pass-through entity to carry out part of a federal program, but excludes the beneficiary of such program. A Subrecipient may also be a recipient of other Federal Grants directly from a federal awarding agency.

4. Determination of a Contractor, Recipient, or Subrecipient.

A State Agency must make case-by-case determinations whether each Grant it makes for the disbursement of federal or State program funds casts the party receiving such funds in the role of a Contractor, Recipient or Subrecipient.

When determining whether an agreement creates a Contractor, Recipient, or Subrecipient relationship, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed below may not be present in all cases, and the State Agency must use its judgment in classifying each agreement as creating either a Grantee or Contractor relationship. The U.S. OMB’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* provides guidance on how to distinguish between a Subrecipient and a Contractor in 2 C.F.R. § 200.331.

4.1 Contractor – A contract for goods and services that creates a State-Contractor relationship is typically one for the purpose of obtaining goods or services for the State Agency’s own use and consumption.

The characteristics that support the classification of an entity as a Contractor includes whether the entity:

- Provides the goods or services within its normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of a state or federal program; and
- Is not subject to compliance requirements of the state or federal program as a result of the agreement at issue, though similar requirements may apply for other reasons.

If the non-federal entity is a Contractor, the State Agency must ensure that the procurement, receipt, and payment for goods and services complies with applicable state

and federal laws, regulations, and policies that apply to the procurement of goods and services, following one of the approved methods for awarding a Contract (e.g., *CPO Policy 2013-004-Contract Management Policy and Procedures*).

If the Grantor State Agency determines that a Contractor relationship exists, they would not use a Grant Contract model or template.

4.2 Recipient – A Recipient receives a State Grant from the State for the purpose of carrying out a portion of a State Grant.

The characteristics that support the classification of an entity as a Recipient include whether the entity:

- Determines who is eligible to receive State assistance;
- Has its performance measured in relation to whether objectives of a State program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable State program requirements specified in the State Grant; and
- In accordance with the agreement at issue, uses the State financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

For any entity determined to be a Recipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.

4.3 Subrecipient – A Subrecipient receives a Federal Grant from the State for the purpose of carrying out all or a portion of a Federal Grant creating a federal assistance relationship with the Subrecipient.

The characteristics that support the classification of an entity as a Subrecipient include whether the entity:

- Determines who is eligible to receive federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable federal program requirements specified in the Federal Grant; and
- In accordance with the agreement at issue, uses the federal financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

For any entity determined to be a Subrecipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.

5. Documentation of Grantee Selection Process.

The Grantor State Agency shall document the Grantee selection process. The Grantor State

Agency shall provide a summary of the Grantee selection process to the Central Procurement Office.

6. Alternative Payment Methodologies.

Any Grantor State Agency seeking to use the partial, periodic, or total advance payment language contained in the Grant templates must submit a Rule Exception Request – Advance Payments, justifying why using that language would be in the best interests of the State. If a Grantor State Agency is advancing federal funds, the Grantor State Agency must ensure that the Grantee disburses those funds immediately in accordance with 2 C.F.R. § 200.305.

In accordance with 2 C.F.R. § 200.305, advance payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Grantee (i.e., the Grantee’s disbursement of allowable costs incurred) in carrying out the purpose of the approved program or project.

7. Cognizant State Agency Determination Process.

The Cognizant State Agency shall be responsible for approving the Recipient or Subrecipient’s Cost Allocation Plan. Other State Agencies that grant funds to the Recipient or Subrecipient must abide by the Cost Allocation Plan approved by the Cognizant State Agency. The Cognizant State Agency is the State Agency whose funds comprise the greatest percentage of State Grant funds received by the Recipient or Subrecipient. The Central Procurement Office determines the Cognizant State Agency for each Recipient or Subrecipient. To provide for continuity of the Cognizant State Agency determination, the determination of the predominant amount of funding must be determined every five years. Once assigned, the term of responsibility shall continue until redetermined. A State Agency may submit to the Central Procurement Office a written request and justification for a Cognizant State Agency redetermination at any time during the five-year period. For example, if the State Agency no longer provides the greatest percentage of funds received by the Recipient or Subrecipient, they could request a redetermination prior to the five-year redetermination.

8. Cost Allocation Plans.

Cost Allocation Plans shall comply with the applicable accounting and financial standards, either Financial Accounting Standards Board (“FASB”) standards or Governmental Accounting Standards Board (“GASB”) standards. Recipients or Subrecipients shall submit any proposed Cost Allocation Plans to the Cognizant State Agency for approval. Methods used for allocating costs may differ between Recipients and Subrecipients. Once a Recipient or Subrecipient receives approval for its Cost Allocation Plan, all other Grantor State Agencies shall accept the approved Cost Allocation Plan. However, Grantor State Agencies are not required to fully fund the costs that are charged to a particular program under an approved Cost Allocation Plan if such costs are not allowable under the Grantor State Agency’s agreement with the Recipient or Subrecipient or exceed the prescribed funding percentage or budgets.

8.1 Types of Costs.

8.1.1 Allowable Costs

The total cost of a Grant is the sum of the allowable direct and allocable indirect costs less any applicable credits. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Grant or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect cost in order to avoid possible double-charging of Grants.

Allowable costs must be reasonable for the performance of the Grant and allocable. Unallowable costs include:

- Alcoholic beverages
- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Fundraising and investment management
- Legal services related to claims against the federal government

8.1.2 *Allocable Costs*

A cost is allocable to a particular Grant or other cost objective if the goods or services involved are chargeable or assignable to that Grant or cost objective in accordance with relative benefits received. This standard is met if the cost:

- (1) Is incurred specifically for the Grant;
- (2) Benefits both the Grant and other work of the Recipient or Subrecipient and can be distributed in proportions that may be approximated using reasonable methods; and
- (3) Is necessary to the overall operation of the Recipient or Subrecipient and is assignable in part to the Grant.

8.1.3 *Direct Costs*

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Grant, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Such costs include:

- Salaries of persons who provide direct services to program beneficiaries and work on only one program (e.g., aging director, transportation program director);
- Travel costs that can be specifically identified to benefit a particular program;
- Equipment purchased for use in only one program;
- Maintenance or insurance for purchased equipment;

- Supplies which are utilized in only one program;
- A contract for professional services which benefits a single program; and
- Printing which benefits a single program.

8.1.4. *Allocable Direct Costs*

Allocable direct costs are those that benefit more than one program, but do not fall under the criteria of indirect costs. Such costs also include:

- Salaries and benefits of program employees whose work benefits more than one program (e.g., nurses, eligibility workers, etc.);
- Travel costs of employees whose work benefits more than one program;
- Occupancy costs of programs;
- Telephone costs of programs;
- Supplies utilized by more than one program;
- Rental and maintenance of equipment used by more than one program;
- Audit costs; and
- Contracted services that benefit more than one program.

8.1.5. *Indirect Costs (facilities & administrative costs)*

Indirect costs are overhead or administrative costs incurred for joint purposes that cannot easily be allocated to a single use. Such costs include:

- Executive director's salary and benefits (or the administrative portion thereof if the executive director spends time on program-related activities);
- Fiscal officer's salary and benefits;
- Secretarial support of administrative employees;
- Supplies of administrative employees;
- Travel of administrative employees;
- Occupancy costs (e.g., rent and utilities) of administrative employees; and
- Postage and telephone costs of administrative employees.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- (1) Administrative or clerical services are integral to a project or activity;
- (2) Individuals involved can be specifically identified with the project or activity;
- (3) Such costs are explicitly included in the budget or have the prior written approval of the federal awarding agency; and
- (4) The costs are not also recovered as indirect costs.

8.2 Cost Allocation.

8.2.1. *Allocation Methods*

Requirements for developing and submitting indirect cost rate proposals and Cost Allocation Plans are contained in Appendices III-VII of the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* as follows below. In the event that a federal requirement for cost rate proposals or Cost Allocation Plans conflicts with a state requirement, the federal requirement shall control.

(1) Appendix III to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs): https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iii

(2) Appendix IV to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations; https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iv

(3) Appendix V to Part 200—State/Local Government and Indian Tribe Central Service Cost Allocation Plans; https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.v

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans; https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vi

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals. https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vii

8.2.2. *Instructions for Cost Allocation Plans*

Each Recipient and Subrecipient shall prepare a narrative describing in detail the methods used to allocate costs to the various programs. The plan should include an organizational chart and documents and schedules to support the allocation methods.

The following guidelines should be used when preparing the Cost Allocation Plan:

- The nature of the charges to be allocated will depend on the sophistication of the accounting system. The more sophisticated the system, the fewer the types of charges will be treated as allocable direct expense and

included for distribution. For example, if each employee keeps a detailed time report, the payroll expenditures might be charged directly to each program, and cost allocation per se would not be involved.

- The Cost Allocation Plan must include plans for allocation of allocable direct costs as well as indirect costs. Allocable direct costs will be included with other direct costs of the program in reports to the Grantor State Agency. Allocations that are reported in separate line items on the grantor reports should involve the indirect cost pool only. An entity may wish to have more than one cost allocation pool so that certain types of costs are allocated on different bases.
- The Cognizant State Agency shall review proposed Cost Allocation Plans.
- Once the cost allocation plan has been approved by the Cognizant State Agency, all other funding state agencies must accept the approved plans. Where a contracting State Agency has reason to believe that special factors affecting its awards necessitate special consideration, the contracting State Agency should communicate this to the Cognizant State Agency.
- If a dispute arises between the Cognizant State Agency and a Grantor State Agency, the dispute shall be resolved through an appeals process headed by the Commissioner of the Department of Finance and Administration or his or her designee.

9. Grantor State Agency Monitoring Requirements.

9.1 General Requirements for all Grant Contracts

All Grantor State Agencies must:

(a) Evaluate each Recipient or Subrecipient's risk of noncompliance with Federal and State statutes, regulations, and any applicable terms and conditions, for purposes of determining the appropriate monitoring described in paragraphs (b) and (c) of this section, which may include consideration of such factors as:

- (1) The Recipient or Subrecipient's prior experience with the same or similar Grants;
- (2) The results of previous audits including whether or not the Recipient or Subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and the extent to which the same or similar Grant program has been audited as a major program;
- (3) Whether the Recipient or Subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of federal awarding agency monitoring (e.g., if the Recipient or Subrecipient also receives Federal Grants directly from a Federal awarding agency).

(b) Monitor the activities of the Recipient or Subrecipient as necessary to ensure that the Grant is used for authorized purposes, in compliance with Federal and State statutes, regulations, and any applicable terms and conditions; and that Grant performance goals are achieved. Grantor State Agency monitoring of Recipients and Subrecipients must include:

(1) Receiving and reviewing financial and performance reports required by the Grantor State Agency.

(2) Following-up and ensuring that the Recipients or Subrecipients take timely and appropriate action on all deficiencies pertaining to the Grant provided to the Recipient or Subrecipient from the Grantor State Agency detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal Grant provided to the Subrecipient from the pass-through entity as required by 2 CFR § 200.521 Management decision.

(c) Depending upon the Grantor State Agency's assessment of risk posed by the Recipient or Subrecipient (as described in paragraph (a) of this section), the Grantor State Agency shall use these tools, when appropriate, to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing Recipients or Subrecipients with training and technical assistance on program-related matters;

(2) Performing on-site reviews of the Recipients or Subrecipients' program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in 2 CFR § 200.425 Audit services.

(d) Verify that every Subrecipient is audited as required by Subpart F—Audit Requirements of the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* when it is expected that the Subrecipient's Federal Awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 Audit requirements.

The Grantor State Agency shall perform more frequent monitoring for Recipients or Subrecipients determined to be high-risk or if previous monitoring cycles revealed serious deficiencies. If federal Subrecipient monitoring requirements on monitoring frequency are more stringent than those under this Policy, the Grantor State Agency shall comply with the federal requirements.

The Grantor State Agency should assign risk to all Recipients or Subrecipients (e.g., in accordance with 2 C.F.R. § 200.332). At minimum, the Grantor State Agency's risk assignment process shall include the considerations identified in Section 9.2.2 below.

9.2 Annual Monitoring Plan

Each year, all State Agencies governed by this Policy shall develop and submit an annual monitoring plan for review and approval to the Central Procurement Office by October 1.

9.2.1. *Monitoring Plan Components*

The monitoring plan is a summary of the Grantor State Agency planned monitoring activities for the upcoming annual monitoring cycle and shall include:

- The total Grant Contracts population;
- The State Agency's monitoring cycle, e.g., the state or federal fiscal year;
- All Grant Contracts the State Agency will monitor during its monitoring cycle;
- A description of each State or Federal program to be monitored;
- Sample monitoring guides to be utilized for each monitored program;
- Full-time equivalents and personnel classifications for all staff dedicated to monitoring activities;
- A risk assessment for each Recipient or Subrecipient and its related contracts;
- An explanation of the criteria used to assign risk to Recipients or Subrecipients and their related contracts;
- An explanation of each finding from the previous monitoring cycle;
- An explanation of the State Agency's corrective action process for each finding; and,
- The most current list of all Subrecipients that have completed a Federal Single Audit.

9.2.2. *Determining the Population to be Monitored*

When selecting the population of Grant Contracts to be included in its annual monitoring plan, Grantor State Agencies shall consider:

- The Recipients or Subrecipients' risk of noncompliance with federal and State statutes, regulations, and any applicable terms;
- The level of programmatic or financial risk to the State; and,
- Whether the Recipient or Subrecipient has had prior findings indicating serious deficiencies.

9.2.3 *Monitoring Activities*

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

- Any program-specific monitoring requirements;
- All applicable requirements of Title VI of the *Civil Rights Act of 1964*;
- Reviewing any reports required by 2 C.F.R. §§ 200.328 – 200.329;
- Reviewing financial and programmatic reports required by the Grant Contract; and

- Ensuring that the Recipient or Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Grant that the Grantor State Agency detected and communicated to the Recipient or Subrecipient.

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

9.2.4 *Changes to Monitoring Plans*

A Grantor State Agency shall submit any proposed changes to an approved monitoring plan and an explanation for each proposed change to the Central Procurement Office for review and approval. The Grantor State Agency shall document any approved changes to an existing plan.

9.2.5 *Monitoring Reports and Corrective Action Plans*

Grantor State Agencies shall issue reports summarizing any findings or observations identified during monitoring activities within thirty (30) business days of completing all field work. The Grantor State Agency shall retain a copy of the monitoring report and distribute copies to the Grantee and the Comptroller of the Treasury, Division of State Audit.

Upon receipt of a monitoring report with findings, the Recipient or Subrecipient shall prepare a corrective action plan detailing the actions to be taken to correct such findings. The corrective action plan shall include:

- The name of the contact person responsible for the corrective action plan;
- The corrective actions to be taken; and
- The anticipated completion date.

The corrective action plan shall be submitted to the Grantor State Agency for review and approval. The Grantor State Agency shall have thirty (30) business days to approve, reject, or request additional information about the Recipients or Subrecipients' plan. If a corrective action plan is not approved, the Grantor State Agency and the Recipient or Subrecipient shall work together to develop solutions for addressing the monitoring report's findings.

10. Debarment and Suspension.

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

11. Compliance Reviews.

State Agency records obtained under this Policy are subject to evaluation by the Chief Procurement Officer, the Comptroller of the Treasury, or their duly appointed representatives.

12. Central Database.

The Central Database is a resource to be utilized by Grantees and State Agencies, allowing them to enter all information required in the End of Fiscal Year Form and the Information for Audit Purposes Form.

The Cognizant State Agency of each Grantee shall be responsible for verifying that the Grantee has input all required information and that all information in the Central Database is correct. For each Grant Contract, the contracting State Agency shall assist the Grantee with inputting the required information.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t)

**GRANT CONTRACT AND
GOVERNMENTAL GRANT CONTRACT
TEMPLATE CHANGES**

REQUEST: Revise the Grant Contract (“GR”) and Governmental Grant (“GG”) Templates as follows:

- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Central Procurement Office Policy 2013-007 or any amendments or revisions made to this policy statement during the Term.

ATTACHMENT REFERENCE

GRANT BUDGET				
Additional Identification Information As Necessary				
The grant budget line-item amounts below shall be applicable only to expense incurred during the following				
Applicable				
Period:	BEGIN: DATE			END: DATE
	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
	Salaries, Benefits & Taxes	0.00	0.00	0.00
	Professional Fee, Grant & Award ²	0.00	0.00	0.00
	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
	Travel, Conferences & Meetings	0.00	0.00	0.00
	Interest ²	0.00	0.00	0.00
	Insurance	0.00	0.00	0.00
	Specific Assistance To Individuals	0.00	0.00	0.00
	Depreciation ²	0.00	0.00	0.00
	Other Non-Personnel ²	0.00	0.00	0.00
	Capital Purchase ²	0.00	0.00	0.00
	Indirect Cost	0.00	0.00	0.00
	In-Kind Expense	0.00	0.00	0.00
	GRAND TOTAL	0.00	0.00	0.00

¹ Each expense object line-item is defined by the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles* (posted on the Internet at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E>) and CPO Policy 2013-007 (posted online at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-.html>).

² Applicable detail follows this page if line-item is funded.

Federal Award Identification Worksheet

Subrecipient's name (must match name associated with its Unique Entity Identifier (SAM))	
Subrecipient's Unique Entity Identifier (SAM)	
Federal Award Identification Number (FAIN)	
Federal award date	
Subaward Period of Performance Start and End Date	
Subaward Budget Period Start and End Date	
Assistance Listing number (formerly known as the CFDA number) and Assistance Listing program title.	
Grant contract's begin date	
Grant contract's end date	
Amount of federal funds obligated by this grant contract	
Total amount of federal funds obligated to the subrecipient	
Total amount of the federal award to the pass-through entity (Grantor State Agency)	
Federal award project description (as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA))	
Name of federal awarding agency	
Name and contact information for the federal awarding official	
Name of pass-through entity	
Name and contact information for the pass-through entity awarding official	
Is the federal award for research and development?	
Indirect cost rate for the federal award (See 2 C.F.R. §200.332 for information on type of indirect cost rate)	

E. #. Financial Statements. The Grantee shall submit to the State independently audited financial statements containing an auditor's report reflecting the auditor's opinion that the statements are presented fairly and found to be in conformity with generally accepted accounting principles. The independent audit must have been performed by a certified public accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA). The financial statements must be complete, and include all statements and notes to the statements as contained within the audit report. The financial statements and audit report shall be submitted within nine (9) months of the Grantee's reporting period to: Department of Children's Services, Finance & Budget Division.

The financial statements must represent the Contracting entity. Where the financial statements are for a parent company of the entity providing the service, the Contract must be in the name of the parent company and signed by an authorized representative of the parent company. The entity providing the service may be identified within the Contract as the service provider; however, financial responsibility will belong to the parent company.

General Requirements

- E.#. Grantee Hosted Services Confidential Data, Audit, and Other Requirements
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Grantee shall protect Confidential State Data as follows:
- (1) The Grantee shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Grantee shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 or 140-3 (current applicable version) validated encryption technologies. The State shall control all access to encryption keys. The Grantee shall provide installation and maintenance support at no cost to the State.

GRANT BUDGET

ALL Grant Budgets must be type-written and mathematically correct in every aspect.

Each Grant Budget page must be numbered consecutively.

The Grant Contract column total must equal the Maximum Liability of the Grant Contract.

Line-Item funding must comply with the Expense Object Line-Item Category Definitions provided by the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles* (which is posted on the Internet at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>). Budget line-items and the definitions above have legal, audit, and federal funding implications, and contracting agency staff are solely responsible for whether appropriate line-items are funded in accordance with the scope of service and the definitions set out by CPO Policy 2013-007 and U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles*.

In line-items that WILL BE FUNDED, replace the zeros (“0.00”) associated with each line-item as appropriate. If a line-item will NOT be funded, leave the associated, “0.00” dollar amount.

Grant Budget Line-Item Detail.

These instructions do NOT preclude adding Line-Item Detail (and associated requirements) for other line-items, provided that the additional detail is clear and mathematically correct.

Delete the entire Grant Budget Line-Item Detail page if NONE of the following five line-items, which requires detail, is funded: Professional Fee, Grant & Award; Interest; Depreciation; Other Non-Personnel; Capital Purchase.

For each line-item requiring detail that is funded by the Grant Budget, complete the appropriate line-item detail box.

Delete the line-item detail box for each of the line-items that is NOT funded.

Do NOT draft the Grant Budget Line-Item Detail to describe a line-item only as “contracts,” “contracted services,” “other,” “professional services,” or “miscellaneous.”

Multiple Grant Budget Periods.

If a multi-year grant contract is to be written such that funding is restricted on an annual basis, such must be reflected in the Grant Budget by means of repeated use of the grant budget pages, numbered consecutively, detailing funding information for consecutive period of applicability. If a grant budget attachment does include multiple pages respectively applicable consecutive periods of applicability, a “roll-up” budget page totaling all lines for all periods is NOT required. However, the sum of all totals must agree with the Grant Contract’s Maximum Liability and any other relevant provisions of this Grant Contract.

Option: Grant Budget Grantee Match Requirement

Replace the Grant Budget table with the table on the following page if a grantee match is required.

GRANT BUDGET				
Additional Identification Information As Necessary				
The Grant Budget line-item amounts below shall be applicable only to expenses incurred during the following applicable period:				
BEGIN: DATE		END: DATE		
	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE MATCH	TOTAL PROJECT
	Salaries, Benefits & Taxes	0.00	0.00	0.00
	Professional Fee, Grant & Award ²	0.00	0.00	0.00
	Supplies, Telephone, Postage & Shipping, Occupancy, Equipment Rental & Maintenance, Printing & Publications	0.00	0.00	0.00
	Travel, Conferences & Meetings	0.00	0.00	0.00
	Interest ²	0.00	0.00	0.00
	Insurance	0.00	0.00	0.00
	Specific Assistance To Individuals	0.00	0.00	0.00
	Depreciation ²	0.00	0.00	0.00
	Other Non-Personnel ²	0.00	0.00	0.00
	Capital Purchase ²	0.00	0.00	0.00
	Indirect Cost	0.00	0.00	0.00
	In-Kind Expense	0.00	0.00	0.00
	Grantee Match Requirement (for any amount of the required Grantee Match that is <u>not</u> specifically delineated by budget line-items above)	0.00	0.00	0.00
	GRAND TOTAL	0.00	0.00	0.00

¹ Each expense object line-item is defined by the U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles (posted on the Internet at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-11/part-200/subpart-E>) and CPO Policy 2013-007 (posted online at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-.html>).

² Applicable detail follows this page if line-item is funded.

³ A Grantee Match Requirement is detailed by this Grant Budget, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the "Grant Contract" column above, shall be reduced by the amount of any Grantee failure to meet the Match Requirement.

Grant Budget Line-Item Detail.

Replace the Grant Budget attachment with the following if the grant requires a more detailed breakdown of budget items.

ATTACHMENT REFERENCE

GRANT BUDGET

Additional Identification Information As Necessary

APPLICABLE PERIOD: The grant budget line-item amounts below shall be applicable only to expense incurred during the period beginning **DATE**, and ending **DATE**.

	EXPENSE OBJECT LINE-ITEM CATEGORY ¹	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
	Salaries ²	0.00	0.00	0.00
	Benefits & Taxes	0.00	0.00	0.00
	Professional Fee, Grant & Award ²	0.00	0.00	0.00
	Supplies	0.00	0.00	0.00
	Telephone	0.00	0.00	0.00
	Postage & Shipping	0.00	0.00	0.00
	Occupancy	0.00	0.00	0.00
	Equipment Rental & Maintenance	0.00	0.00	0.00
	Printing & Publications	0.00	0.00	0.00
	Travel, Conferences & Meetings ²	0.00	0.00	0.00
	Interest ²	0.00	0.00	0.00
	Insurance	0.00	0.00	0.00
	Specific Assistance To Individuals ²	0.00	0.00	0.00
	Depreciation ²	0.00	0.00	0.00
	Other Non-Personnel ²	0.00	0.00	0.00
	Capital Purchase ²	0.00	0.00	0.00
	Indirect Cost (% and method)	0.00	0.00	0.00
	In-Kind Expense	0.00	0.00	0.00
	GRAND TOTAL	0.00	0.00	0.00

¹ Each expense object line-item is defined by the *U.S. OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E Cost Principles* (posted on the Internet at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E>) and CPO Policy 2013-007 (posted online at <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-.html>).

² Applicable detail follows this page if line-item is funded.

**BUILD AMERICA, BUY AMERICA
("BABA") ACT - AMERICA
PREFERENCE IN FEDERAL FINANCIAL
ASSISTANCE PROGRAMS FOR
INFRASTRUCTURE"**

REQUEST: Add the following as a new optional provision to the GR and GG Templates:

Buy America Provision

Add the following provision as appropriate.

E.#. Buy America Provision. As required by Section 70914 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58), on or after May 14, 2022, none of the funds under a federal award that are part of a Federal financial assistance program for infrastructure may be obligated for a project unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver.

None of the funds provided under this award may be used for a project for infrastructure unless:

- a. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States,
- b. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation, and
- c. all construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

This Buy America preference only applies to articles, materials, and supplies consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, used at or within the finished structure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

STATEWIDE PAYMENT CARD POLICY
§ 9.4

REQUEST: Revise section 9.4. of Policy Number 2015-010 of the Central Procurement Office Statewide Payment Card Policy and Procedures.

9.4. Records Retention Requirements.

The Office of the Secretary of State oversees Tennessee's Records Management Division, the State Agency that provides guidance on disposition, retention, and destruction of state records. Records Disposition Authority (RDA) SW23 applies to most P-Card documents. RDA SW23 requires that State Agencies maintain documents related to P-Card use for five (5) years and destroy them at the end of the five-year period. RDA SW48 requires that State Agencies maintain documents related to P-Card issuance for at least 5 years or for the duration of the card holder's P-Card purchasing role in the program, whichever is longer. P-Card documents may be maintained in either paper or electronic format, so long as the electronic content has been verified for completeness, accuracy, and usability. RDAs are available in their entirety at <https://sos.tn.gov/rmd>.

**STATE AGENCY P-CARD PROCEDURES
MODEL**

REQUEST: Revise the State Agency P-Card Procedures Model as follows:

STATE AGENCY P-CARD PROCEDURES MODEL

Instructions: This model serves as a guide if a State Agency chooses to develop its own internal P-Card procedures and is intended to have the flexibility to adjust to each State Agency's specific needs. Any State Agency P-Card Procedures should align with [CPO Policy 2015-010](#), Statewide Payment Card Policy and Procedures and must be submitted for review and approval by the Statewide P-Card Program Director and the Comptroller of the Treasury. Replace or otherwise address red instructional text as indicated and submit completed procedures in a digital file (DOC format) to: P.Card@tn.gov and copy to: cpc@cotcpc.zendesk.com.

If a State Agency chooses not to develop its own internal procedures, then the presumption is that the State Agency is following [CPO Policy 2015-010](#), Statewide Payment Card Policy and Procedures and will coordinate State Agency Employee roles with the Statewide P-Card Program Administration Team.

4. Records Retention Requirements.

The Office of the Secretary of State oversees Tennessee's Records Management Division, the State Agency that provides guidance on disposition, retention, and destruction of state records. Records Disposition Authority (RDA) SW23 applies to most P-Card documents. RDA SW23 requires that State Agencies maintain documents related to P-Card use for five (5) years and destroy them at the end of the five-year period. RDA SW48 requires that State Agencies maintain documents related to P-Card issuance for at least 5 years or for the duration of the card holder's P-Card purchasing role in the program, whichever is longer.

P-Card documents may be maintained in either paper or electronic format, so long as the electronic content has been verified for completeness, accuracy, and usability.

RDAs are available in their entirety at <https://sos.tn.gov/rmd>.

Describe your Agency's process for maintaining and destroying P-Card documents; include whether documents will be maintained in paper format, electronic format, or both.

5. P-Card Program Roles and Responsibilities.

5.1. State Agency P-Card Program Coordinator.

The State Agency P-Card Program Coordinator serves as the main point-of-contact between the **State Agency Name** and the Statewide P-Card Program Administration Team. **State Agency's Name** must provide the Statewide P-Card Program Administration Team written notice within five (5) business days of any changes in status of the State Agency P-Card Program Coordinator.

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

- Completing the Cardholder and Agency Coordinator training in Edison;
- Collaborating with the **State Agency Name's [insert title of the person who serves as the Agency's Fiscal Director]** to develop and maintain the **State Agency's Name** internal P-Card Procedures to address policy areas unique to the **State Agency's Name** or that are not covered by this Policy, as applicable;

- Working with State Agency management to identify job titles, positions, or Edison roles that require use of a P-Card or Virtual P-Card;
- Working with **State Agency Name** management to determine appropriate Cardholder spending limits based on budget restrictions, job requirements, historical spending patterns, and overall procurement practices;
- Evaluating Cardholder spending limits against actual usage at least annually;
- Terminating a Cardholder's status if necessary (e.g., due to separation from employment, transfer to another State Agency, low P-Card usage) and cancelling a P-Card;
- Ensuring Agency-wide reconciliation procedures support timely verification and allocation of transactions to the chart of accounts at least monthly;
- Ensuring that transactions are reconciled and supported by adequate documentation; and
- Ensuring that Cardholder Profiles permit MCC groups that a Cardholder needs to meet his or her job requirements.
- **Add other, non-conflicting responsibilities to reflect your Agency's needs**

5.2. *Cardholder Supervisors.*

Cardholder Supervisors must have a thorough knowledge of the Cardholders' job responsibilities to determine if purchases are job-related or otherwise authorized by CPO rules, policies or procedures. The Cardholder Supervisor's roles, duties, and responsibilities may include:

- Completing the Cardholder and Agency Coordinator training in Edison;
- Reviewing all documentation and ensuring it is submitted according to this Policy and the State Agency's internal P-Card Procedures, as applicable;
- Approving or rejecting all Transactions as to the appropriateness of the transaction;
- Ensuring that all documentation is submitted according to the Statewide Policy and **State Agency's Name** internal P-Card Procedures, as applicable;
- Maintaining knowledge of the Statewide Policy and **State Agency's Name** internal P-Card Procedures, as applicable; and
- Requesting reasonable spending limits in accordance with the Statewide Policy and **State Agency's Name** internal P-Card Procedures, as applicable.
- **Add other, non-conflicting responsibilities to reflect your Agency's needs.**
Any one Agency may have several Cardholder Supervisors.

POLLUTION LIABILITY INSURANCE

Request: **Revise the optional Insurance Options available in the FA Template by adding the following coverage:**

Option 8: Pollution/Environmental Liability Insurance

Add the following Pollution/Environmental coverage if the Contract involves Contractors using and transporting chemicals, pesticides, and other types of pollution exposures.

d. Pollution Liability Insurance

- 1) The Contractor shall maintain pollution liability insurance, in an amount not less than **one million dollars (\$1,000,000)** per occurrence and not less than **one million dollars (\$1,000,000)** in the aggregate, which shall cover liability arising from (i) bodily injury, property damage, natural resources damages, property loss of use/revenue, and cleanup due to the release of pollutants; (ii) claims for cleanup on or off-site resulting from releases, either sudden or gradual, occurring during construction, operation and testing; (iii) liability arising out of the transportation of pollutants; (iv) claims for cleanup or third party liability arising from spills from owned or leased vehicles during construction, operation and testing; and (v) governmental mandated liability, including fines and penalties, for cleanup arising from releases or contamination.

- 2) If the coverage is on a claims-made policy form, the Contractor must purchase extended claim reporting or tail coverage for a minimum of five (5) years from the date of the final contract payment.

**TERMS AND CONDITIONS FOR
PURCHASE ORDERS ISSUED UNDER
AGENCY LPAS**

REQUEST: Revise the Terms and Conditions for Purchase Orders as follows:

Procurement professionals should complete form fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name, amount, will/will not**) as indicated and with conforming font and color. If no other terms, either from the configurator or contract template or model, are being utilized then these terms and conditions may be included as part of the informal purchase solicitation process. This paragraph should be deleted before attaching the terms and conditions document the purchase order.

Terms and Conditions**A. Standard Terms and Conditions**

1. Total Purchase Order Amount. In no event shall the liability of the State under this Purchase Order exceed the Total Purchase Order Amount.
2. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Purchase Order. If, upon inspection, the State determines that the goods or services are defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any defects, the goods or services shall be deemed to have been accepted by the State.
3. Modification, Amendment or Change Order. This Purchase Order may be modified only by a written amendment or change order signed by the State and the Contractor.
4. Limitation of Liability. The State shall have no liability except as specifically provided in this Purchase Order. In no event shall the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise. The State's total liability under this Purchase Order or otherwise shall under no circumstances exceed the Total Purchase Order Amount.
5. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Purchase Order shall be limited to an amount equal to two (2) times the Total Purchase Order Amount. In no event shall this Section limit the Contractor's liability for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
6. Termination for Convenience. The State shall have the right to immediately terminate this Purchase Order, without cause and for any reason, upon written notice to the Contractor,

delivered by mail or electronic means. The State's notice of termination is effective upon the State's issuance.

7. Subject to Funds Availability. The State's payment of this Purchase Order is subject to the appropriation and availability of State or federal funds. In the event that funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Purchase Order, effective immediately, upon written notice to the Contractor. If the State terminates this Purchase Order due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date.

8. Payment of Purchase Order. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

9. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor, under any contract between the Contractor and the State.

10. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

11. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract. Contractor does hereby attest, certify, warrant, and assure that it shall not knowingly utilize the services of an unauthorized immigrant in the performance of this Agreement and shall not knowingly utilize the services of a subcontractor who will utilize the services of an unauthorized immigrant in the performance of this Agreement.

12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omission, or negligence on the party of the Contractor, its employees, or any other person acting for or on its or their behalf relating to this Purchase Order. The Contractor further agrees it shall be liable for the reasonable costs of attorneys for the State to enforce the terms of this Purchase Order.

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

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

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

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

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

15. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through

the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

16. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the provision of goods or services under this Purchase Order.

17. Governing Law. This Purchase Order shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Purchase Order. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Purchase Order shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.

18. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Tenn. Code Ann. § 12-3-515, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Tenn. Code Ann. § 12-3-515, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

19. Entire Agreement. This Purchase Order contains the entire understanding between the State and the Contractor relating to its subject matter, including all terms and conditions of the parties' agreement. This Purchase Order supersedes any and all prior understandings, representations, negotiations, and agreements between the State and the Contractor, whether written or oral.

B. Special Terms and Conditions

20. Conflicting Terms and Conditions. Should any of these Special Terms and Conditions in Section B conflict with the Standard Terms and Conditions in Section A, the Standard Terms and Conditions shall control.

Add clear, non-conflicting terms and conditions as appropriate. Terms that are included in the FA (fee for goods or services) Template may be added and re-numbered as appropriate.

Add the following term, “Click-wrap Agreements” if the purchase involves information technology or otherwise appropriate. If unsure whether the Click-wrap Agreements term is appropriate, consult the CPO legal team.

#. Click-wrap Agreements. The Contractor agrees that click-wrap agreements shall not be binding upon the State, any State Agency, or any State Employee. No State Employee has the actual or apparent authority to enter into click-wrap agreements on behalf of the State without the approval of the Central Procurement Office and the Office of Information Resources. No State employee has the authority to modify, amend, or supplement this Purchase Order through a click-wrap agreement. This Purchase Order can only be modified, amended, or supplemented under these terms through an amendment, reduced to writing, and approved in accordance with the Central Procurement Office’s rules, policies, and procedures.

Add the following term, “Liens, Encumbrances, and Title” as appropriate.

#. Liens, Encumbrances, and Title. The Contractor owns and has good and marketable title to, and legal ownership of the goods, free and clear of any and all liens, security interests, pledges, mortgages, charges, limitations, claims, restrictions, rights of first refusal, rights of first offer, rights of first negotiation or other encumbrances of any kind or nature (collectively, “Encumbrances”). Upon delivery, without exception, the State will acquire from the Contractor legal and beneficial ownership of, good and marketable title to, and all rights to the goods to be sold to the State by the Contractor, free and clear of all Encumbrances. The Contractor shall, within ten (10) days after delivery deliver to the State if required by applicable law to establish or show evidence of ownership, any and all documents or certificates required to establish or show evidence of the State’s ownership in the goods.

Add the following term, “Iran Divestment Act” to Purchase Orders over \$1,000.

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

Add the following term, “Federal Awards Procurement Standards” as appropriate.

#. Federal Awards Procurement Standards. If applicable, Contractor agrees to comply with the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.327.

#. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

Add the following term, "Insurance" as appropriate.

#. Insurance. For the duration of the Contract, Contractor agrees to the following. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of the Contract. Contractor will pay for and maintain these minimum limits of insurance coverage:

- a. Commercial General Liability insurance coverage with limits not less than \$1,000,000 per occurrence and in the aggregate,
- b. Automobile Liability insurance coverage covering liability arising out of the operation of any vehicle with limits not less than \$1,000,000 combined single limit,
- c. Workers' Compensation and Employers' Liability in the amount of \$1,000,000.
- d. Contractor agrees to designate the State as the Certificate Holder of the insurance coverages.
- e. Contractor agrees to include the State as an additional insured on the Commercial General Liability and Automobile Liability insurance coverages.
- f. Contractor agrees to include an endorsement for a waiver of subrogation for all coverages.
- g. Contractor will provide the State with a Certificate of Insurance, and applicable endorsement, evidencing such coverages.

**SOUTHWEST HUMAN RESOURCE
AGENCY (SWHRA)**



Southwest Human Resource Agency

P.O. Box 264 • 1527 White Avenue

Henderson, Tennessee 38340

Telephone: 731-989-5111 • Fax: 731-989-3095

Kevin Davis

Chairman of the Board

Mike Smith

Executive Director

Dear Tennessee State Procurement Commission,

In response to a procurement finding made by the TDOT Multimodal compliance review team during our recent transit division subrecipient compliance review, Southwest Human Resource Agency's Governing Board adopted the attached Procurement Policy for our transit division and to assure compliance with Federal Transit Administration (FTA) and TDOT-funded purchases requirements. Based on the recommendation of TDOT Multimodal's compliance review team, this document reflects compliance with FTA procurement regulations and resolves the review finding.

Our Board adopted this procurement policy document pursuant to Tennessee Code Annotated (TCA) § 13-26-104(b)(2), which requires Human Resource Agency governing boards to develop a system of competitive bidding on purchases of supplies, equipment, and other contracts; and that such written procedures be sent to the state Procurement Commission for approval.

Accordingly, we kindly ask for your review and approval of our procurement policy document for our transit division.

Please don't hesitate to reach out with any questions or concerns you may have.

Respectfully,

Mike Smith

SWHRA Executive Director

CC: TDOT Multimodal Compliance Review Team



Southwest Human Resource Agency
P.O. Box 264 • 1527 White Avenue
Henderson, Tennessee 38340
Telephone: 731-989-5111 • Fax: 731-989-3095

Eddie Bray
Chairman of the Board

Mike Smith
Executive Director

Southwest Human Resource Agency
Executive Committee Minutes
June 5, 2023

Transportation Director Diana Turner requested approval of the Transportation Procurement Policy, which had been updated and reviewed by Rainey, Kizer, Reviere, Bell.

A motion was made by Mayor Mike Greasy to approve the request, seconded by Mayor Kevin Davis; motion carried.



Kevin Davis, SWHRA Governing Board Chairman

**Southwest Human Resource Agency
Office of Public Transportation**

**PROCUREMENT POLICY
For FTA and TDOT-Funded Purchases**

April 27, 2023

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1. INTRODUCTION

1.1. Purpose

This policy establishes guidelines and minimum standards that Southwest Human Resource Agency Office of Public Transportation (hereinafter "Subrecipient") will use in the management of its third party contracts. These policies are intended to ensure that Subrecipient complies with Federal Transit Administration's (FTA) and Tennessee Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of Subrecipient is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- 2 CFR §§ 200.318 – 200.327

1.2. Applicability

This manual applies to all procurements undertaken and financed, in whole or in part, with FTA and State of Tennessee financial assistance provided to Subrecipient to support **open market procurements**. An open market solicitation is used to purchase a good or service by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts;
- Intergovernmental Agreements.

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. Subrecipient will avoid the following situations considered to be restrictive of competition:

- Application of unreasonable requirements placed on firms in order for them to qualify to do business;
- Imposition of geographic preference standards in the selection of vendors;
- Imposition of unnecessary experience and excessive bonding requirements;
- Use of noncompetitive pricing practices between firms or between affiliated companies;
- Employment of noncompetitive awards to any person or firm on retainer contracts;
- Failure to recognize organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- Use of "brand name" specifications without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Subrecipient will conduct procurements in a manner that does not give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt Tennessee licensing laws from being considered in those disciplines that are regulated by the State of Tennessee. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

1.3. Third Party Contracting Capacity

FTA regulations (2 CFR § 200.319(c) and FTA Circular 4220.1F, Chapter III, § 3a) require Subrecipient to have written procurement procedures. This policy is designed to meet FTA and TDOT's requirements in this regard.

1.4. Procurement Personnel

Subrecipient shall designate individuals to serve in the following roles:

- *Procurement Officer or Procurement Team*: Subrecipient shall designate a Procurement Officer or a team of procurement personnel tasked with the implementation of this policy. Specifically, the procurement team's responsibilities include but are not necessarily limited to: determining the applicability of this policy to Subrecipient's procurement activities (see Section 1.5), identifying and resolving conflicts of interest (Sections 2.5.2 – 2.6), overseeing the potential prequalification of bidders and proposers (Section 5.3), preparing written justifications for any non-competitive procurements (Section 5.6.1.2), overseeing the evaluation of bids and proposals (Section 5.7.3), managing contract time extensions (Section 6.2.3.3), and ensuring that Subrecipient's protest procedures are included in all solicitation documents as well as assisting the Subrecipient's Attorney with the resolution of protests (Sections 6.7.2 – 6.7.3).
- *Attorney or Legal Expert*: Subrecipient shall designate an Attorney (or other individual with legal expertise) tasked with reviewing potential organizational conflicts of interest (Section 2.6), as well as reviewing all procurement protests and advising Subrecipient on potential resolutions (Section 6.7.2).
- *Project Manager(s)*: Prior to execution of each third party contract, Subrecipient shall designate a Project Manager to serve as its principal point of contact with the contractor and as the primary administrator of the contract (Section 6.1).

1.5. Relationship to Other Subrecipient Policies

These policies and procedures pertain only to Subrecipient's purchases made with FTA and/or Tennessee funds for the Southwest Human Resource Agency's Office of Public Transportation; purchases with local funds and for purposes other than transit should follow applicable regulations and Tennessee law.

This document may not answer all questions related to purchasing; if any employee of Subrecipient has a question regarding these procedures, the organization's Transportation Director should be contacted for clarification and guidance. When any conflict exists between this policy and the existing policies of the Subrecipient, the Transportation Director shall render an opinion regarding which policy shall prevail. If any employee of Subrecipient determines that a conflict exists between these policies and state and local law, they shall contact the Transportation Director and communicate the conflict.

2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

2.1. Purpose

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal conflicts of interest
- Gifts; and
- Violations.

2.2. Definition of Key Terms

As used herein, the following definitions apply:

Conflict of Interest – A situation in which an employee, board member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between a person covered by this policy and their private interests and their professional obligations to Subrecipient such that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

Financial Interest – An officer, agent, board member, his or her partner, employee, or their immediate family, is considered as having a financial interest in a company if: they receive more than \$10,000 in consulting income, salaries, or equity in the company; they have more than 5 percent equity in the company; they have intellectual property rights in or receive royalties from the company; or they serve as a director, officer, partner, trustee, manager or employee of the company.

Immediate Family – Immediate family includes an employee's spouse, grandparent, parent, brother, sister, child or grandchild, his or her partner.

2.3. Applicability

No employee, elected official, agent, or other individual under an employment contract with Subrecipient, or their immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of those previously listed individuals has a financial or other interest in the firm selected for award.

2.4. Gifts

Any contractor, subcontractor, or supplier who has a contract with Subrecipient; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or providing favors to any individual defined in Section 2.2, who is charged with the duty of:

- Preparing plans, specifications, or estimates for public contract; or
- Awarding or administering public contracts; or
- Inspecting or supervising construction.

Subrecipient also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.

2.5. Employee Conflicts of Interest

2.5.1. Conflicts of Interest

It shall be a breach of ethical standards for any Subrecipient employee to participate directly or indirectly in a procurement when the employee knows:

- The employee or any member of the employee's immediate family, board member, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

2.5.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the Transportation Director; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the Transportation Director, an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the Transportation Director to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

2.5.3. Employee Disclosure Requirements

A Subrecipient employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a Subrecipient employee or by the official acts or actions of Subrecipient, shall disclose the precise nature and value of such interest in a written disclosure statement to the Transportation Director who, in turn, will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the Transportation Director has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a Subrecipient employee or by the official acts or actions of Subrecipient, he/she shall disclose the precise nature and value of such interest in a written disclosure statement.

2.5.4. Confidential Information

A Subrecipient employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with Subrecipient.

2.5.5. Solicitation Provision

Subrecipient's Transportation Director shall insert the following provisions in all formal competitive solicitation documents for products and services:

"These policies shall apply to Subrecipient employees involved in procurement. It is a breach of ethical standards for any Subrecipient employee to participate directly or indirectly in a procurement when the employee knows:

- *The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;*
- *A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or*
- *Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.*

In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of any evaluation committee, governing board, or other Subrecipient employees other than the designated Procurement Team."

2.6. Organizational Conflicts of Interest

The Transportation Director and procurement personnel are encouraged to work closely with the Subrecipient's Attorney to review all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to Subrecipient;
- A contractor's objectivity in performing contract work is or might otherwise be impaired;
- A contractor has an unfair competitive advantage; or
- A contractor has established, in an earlier contract, ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. Subrecipient's Transportation Director will insert the following Conflict of Interest Disclosure Statement in its solicitation when contracting for services of this nature:

“(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with the Subrecipient, or with an organization whose interests may be substantially affected by the Subrecipient's activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Transportation Director will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to Subrecipient will be used to determine whether an award to the offeror may create a

conflict of interest. If any such conflict of interest is found to exist, the Transportation Director may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of Subrecipient to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Transportation Director. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Transportation Director may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of Subrecipient.”

3. SUBRECIPIENT RESPONSIBILITIES UNDER FEDERAL LAW

3.1. Third Party Contracting Capacity

Subrecipient must maintain adequate technical capacity to carry out its FTA and/or Tennessee assisted projects and comply with Federal and state rules. Subrecipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, state, and local requirements.

3.2. Contract Administration System

Subrecipient must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state and local requirements. A contract administration system is addressed in Section 6.

3.2.1. Written Procurement Procedures

Subrecipient must maintain and follow written procurement procedures that address:

- (a) Solicitations – Requirements for Subrecipient solicitations are addressed in Section 5.
- (b) Necessity – Requirements related to Subrecipient's need for products or services are addressed in Section 3.2.2.
- (c) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement are addressed in Section 3.2.2
- (d) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 3.5.2.
- (e) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 3.4.3 and 3.4.4.
- (f) Procurement Methods – Descriptions of the procurement methods that Subrecipient may use are included in Section 5.
- (g) Legal Restrictions – Descriptions of Federal and state restrictions on Subrecipient's acquisitions are included in Section 5.
- (h) Third Party Contract Provisions – Specific third party contract provisions required for each third party contract and flow down requirements to subcontracts are included in Section 3.1 through 3.7.
 - (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.

- (2) Resolution of Third Party Contracting Issues – Procedures related to the resolution of third party contracting issues are included in Section 6.8.

3.2.2. Adequate Third Party Contract Provisions

Subrecipient must include provisions in all of its third-party contracts that are adequate to form a sound and complete agreement.

3.2.3. Industry Contracts

Subrecipient shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. Subrecipient shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to Subrecipient.

3.2.4. Revenue Contracts

Subrecipient may enter into a revenue contract with a third party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA and/or Tennessee funded asset. Any such said contract opportunity will follow a competitive selection procedures and principles outlined herein.

3.2.5. Record Keeping

Subrecipient must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. Subrecipient must maintain these records for five (5) years after Subrecipient and its lower-tier subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- (a) Written Record of Procurement History – Subrecipient must maintain written records detailing the history of each procurement. For all procurements above the micro-purchase level Subrecipient must maintain records relating to:
- (1) Procurement Method – Subrecipient must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
 - (2) Contract Type – Subrecipient must state the reasons for selecting the contract type it used;
 - (3) Contractor Selection – Subrecipient must state its reasons for contractor selection or rejection;
 - (4) Contractor Responsibility – Subrecipient must provide a written determination of responsibility for the successful contractor;
 - (5) Cost or Price – Subrecipient must evaluate and state its justification for the contract cost or price; and
 - (6) Reasonable Documentation – Subrecipient must retain documentation commensurate with the size and complexity of the procurement.

- (b) Access to Records – Subrecipient must provide FTA and TDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.
- (c) Use of Technology/Electronic Commerce – Subrecipient may use an electronic commerce system to conduct third party procurements. If Subrecipient uses an electronic commerce system, then the following requirements apply:
 - (1) Sufficient System Capacity – Subrecipient’s system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
 - (2) Written Procedures – Before any solicitation takes place, Subrecipient must establish adequate written procedures to ensure that all information FTA/TDOT requires for project administration is entered into the system and can be made readily available to FTA/TDOT as needed.

3.3. Determination of Needs

Subrecipient must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. Subrecipient shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

3.4. Eligibility

All products and services to be acquired with FTA and/or Tennessee funds must be eligible under the Federal and state law authorizing the FTA and/or Tennessee assistance award and any regulations thereunder. All products and services to be acquired with FTA and/or Tennessee funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA and/or Tennessee assistance to be used is derived.

3.5. Necessity

Subrecipient shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need.

3.5.1. Unnecessary Reserves

Subrecipient shall limit the acquisition of federally and state-assisted property and services to the amount it needs to support its operations.

3.5.2. Acquisition for Assignment Purposes

Subrecipient shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

- (a) General Prohibition – Subrecipient may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient’s Needs – TDOT and FTA recognize that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. Subrecipient’s later needs might decrease due to changed circumstances or honest mistakes. In those situations, Subrecipient may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
 - (1) Joint Procurements – Subrecipient and one or more other FTA and/or state recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
 - (2) Participation in TDOT Sponsored Vehicle Procurements – Subrecipient may enter into contracts developed by the State of Tennessee to acquire vehicles. See Section 4.3 of this policy for a full discussion of state government purchasing schedules and contracts.
- (d) Procurement Size – For every procurement, Subrecipient shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, Subrecipient shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – Subrecipient shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, Subrecipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.
- (f) Lease Versus Purchase – Subrecipient shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If Subrecipient chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.

- (g) Lease of Rolling Stock – For rolling stock and related equipment, the Fixing America’s Surface Transportation (FAST) Act removed the requirement to demonstrate the cost effectiveness of leasing compared to purchasing described above in subsection (f). The FAST Act, however, now requires Subrecipient to submit a report to FTA within three years of executing a rolling stock lease that includes: (1) An evaluation of the overall costs and benefits of leasing rolling stock; and (2) A comparison of the expected short-term and long-term maintenance costs under a lease versus maintenance costs when buying rolling stock.
- (h) Specifications – Subrecipient’s procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. Subrecipient’s procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or Tennessee laws or regulations.

3.6. Contractor Responsibilities

Subrecipient, in awarding contracts, financed in whole or in part, with FTA and/or Tennessee financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules (2 CFR § 200.318(h)) that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. § 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, Subrecipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3.6.1. Debarment and Suspension

Debarment and suspension regulations and guidance include the following provisions.

3.6.1.1. DOT Debarment and Suspension Regulations

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 CFR § 1200). Subrecipient shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR § 180).

Specifically, Subrecipient must verify that the prospective contractor is not debarred, suspended, or otherwise ineligible by:

- Checking System for Award Management Exclusions (at SAM.gov); or
- Collecting a certification; or
- Adding a clause or condition to the covered transaction.

3.6.1.2. System for Award Management

The System for Award Management (SAM) combines Federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM includes the functionality from the following systems:

- Central Contractor Registry (CCR)
- Federal Agency Registration (Fedreg)
- Online Representations and Certifications Application
- Excluded Parties List System (EPLS)

As a best practice, Subrecipient should print the screen with the results of the SAM search to include in the procurement file. Alternatively, Subrecipient may collect a debarment and suspension certification from the prospective third party contractor or include a clause in the third party contract requiring disclosure. FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred.

3.6.2. Lobbying Certification and Disclosure

If a third-party contract will exceed \$100,000, before awarding the contract, Subrecipient will obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

3.6.3. Required Contract Clauses

In addition to the requirements outlined above, there are various required clauses that may apply to Subrecipient’s third-party contracts, depending upon the type of procurement, funding source, and the anticipated dollar value of said contract. It is the responsibility of Subrecipient to assess each procurement and determine the applicable terms and conditions that should be included in the solicitation and contract documents.

For FTA-funded procurements, please see the listing of required third-party contract clauses contained in the most recent FTA Master Agreement.

For Tennessee-funded procurements, please see the Grant Contract between the State of Tennessee, Department of Transportation and Subrecipient for a listing of standard terms and conditions to be included in the solicitation and contract documents.

3.7. Bonding

Some procurements may necessitate Subrecipient to require the vendor to submit a bid bond, performance bond, or payment bond (typically construction projects). When bonding is required, the following conditions will apply.

3.7.1. Thresholds

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the minimum requirements must be as follows:

3.7.1.1. Bid Guarantee

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

3.7.1.2. Performance Bond

A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3.7.1.3. Payment Bond

A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. FTA has determined that payment bonds in the following amounts are adequate to protect Federal interest and will accept a local bonding policy that meets the following minimums:

- Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million
- More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million
- More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million

3.7.2. Acceptable Sureties

Federal rules for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” (31 CFR Part 223). For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570). As FTA encourages governmental recipient to require similarly acceptable sureties, it shall be the policy of Subrecipient to such accept sureties.

3.7.3. Reduced Bonding

Subrecipient recognizes that bonding costs can be expensive. Subrecipient will accept a local bonding policy that conforms to the minimums described in Section 3.4.1. If bonding levels are sought at levels less than these amounts, Subrecipient must obtain the prior approval of TDOT/FTA. TDOT/FTA shall approve such requests only if it determines that Subrecipient's bonding policy adequately protects the Federal interest in the project.

3.7.4. Excessive Bonding

Subrecipient will adhere to FTA's rules on excessive bonding requirements (FTA Circular 4220.1F, Chapter IV, § 2h(1)(f)). However, if Subrecipient determines it has a material risk of loss because of a failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.7.1 only with the prior approval of TDOT/FTA.

3.8. Preference for U.S. Property—Buy America

Any FTA-funded contract exceeding \$150,000 entered into by Subrecipient requires that all iron, steel, manufactured products (including rolling stock), and construction materials used are produced or manufactured in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

Property that the contractor acquires to perform its construction activities for the recipient, such as tools, machinery, and other equipment or facilities, is not covered by FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, Subrecipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA's Buy America regulations.

3.9. Accessibility

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR § 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR § 1192 and 49 CFR § 38. Notably, DOT incorporated by reference the ATBCB's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

3.10. Veteran Hiring Preference in Construction Contracts

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

4. SOURCES OF ACQUISITIONS

4.1. Force Account

Force account means the use of Subrecipient's own labor forces and equipment to undertake a capital project. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, as well as capital project work on rolling stock. Incremental labor costs from flagging protection, service diversions, or other activities directly related to a capital award may also be defined as force account work. Force account work does not include preventive maintenance or award/project administration activities, which are otherwise direct project costs.

Pursuant to FTA Circular 5010.1E, Chapter IV, Section 5, one of the following conditions must be present to justify use of force account labor: (1) cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement.

When the cost of force account work for a project is greater than \$1,000,000 but less than \$10,000,000, Subrecipient is required to develop and maintain a force account plan, as well as submit a force account justification to FTA prior to incurring costs. When the cost of force account work to be performed is \$10,000,000 or more, both the force account plan and justification must be submitted to FTA, and prior FTA approval of the plan is required before incurring costs. Specifically, the force account plan must contain the following information to be approved by FTA:

- A description of the scope of work;
- A detailed estimate of costs and project schedule; and
- A copy of the proposed Agreement when another public agency is involved.

4.2. Joint Procurements

Subrecipient may participate in joint procurements whereby it and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to Subrecipient's participation in joint procurements:

- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- Subrecipient is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal requirements and that the solicitation document and contract includes all required clauses and certifications.

4.3. State or Local Government Purchasing Schedules or Purchasing Contracts

4.3.1. Definition

FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration’s (GSA) Cooperative Purchasing Program available for Federal Government use.

4.3.2. Small Quantity Conditions for Rolling Stock

To the extent practicable, Subrecipient will use the innovative procurement tools authorized under Section 3019 of the FAST Act, including joint procurements and state or local government contracts. If Subrecipient conducts a stand-alone procurement (i.e., not part of a state/local government contract or joint procurement) for fewer than five buses using Section 5339 grant funding, it must prepare a written justification for not using an authorized “innovative procurement tool” pursuant to 49 USC § 5339(a)(10)(B).

4.3.3. Applicability of Federal Provisions

When using FTA funding to obtain property or services from a state or local government contract, Subrecipient must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, Subrecipient may request the vendor to append the required Federal and/or state clauses in the purchase order or other document that affects Subrecipient’s procurement. When this method is used, Subrecipient shall obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA’s Buy America requirements.

4.3.4. Federal Supply Schedules

Purchases by Subrecipient from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and to products and services to facilitate recovery from a major disaster. The following requirements apply to Subrecipient’s purchases from GSA schedules:

- Subrecipient is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, Subrecipient may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event. Subrecipient shall be responsible for ensuring that the products and services acquired will only be used for recovery.

- Subrecipient must ensure that all Federal requirements, required clauses and certifications are properly followed and included, whether in the master intergovernmental contract or Subrecipient’s purchase document.
- Subrecipient is required to evaluate the reasonableness of prices obtained from GSA schedules. GSA schedule pricing may not be used as a sole or single source for procurement. Subrecipient may only use GSA schedule pricing as one of multiple pricing sources solicited in accordance with its requirements for small purchases described in Section 5.

4.3.5. Existing Contracts

Subrecipient may use existing contract rights as an acquisition source. An “existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto.

4.3.5.1. Permissible Actions

Within the conditions set forth below, Subrecipient may use existing contract rights held by another recipient of FTA assistance:

- (a) Exercise of Options – Subrecipient may use contract options held by another recipient of FTA assistance with the following limitations:
 - (1) Consistency with the Underlying Contract – Subrecipient must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
 - (2) Price – Subrecipient may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
 - (3) Awards Treated as Sole Source Procurements – The following actions may constitute non-compliant sole source awards:
 - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in an unjustified sole source award.
 - ii. Negotiating a Lower Option Price – Exercising an option after Subrecipient has negotiated a lower or higher price will also result in an unjustified sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
- (b) Assignment of Contract Rights (“Piggybacking”) – If Subrecipient finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to another recipient of FTA financial assistance if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded,

or contains other appropriate assignment provisions. Subrecipient may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. Subrecipient need not perform a second price analysis if a price analysis was performed for the original contract; however, Subrecipient must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. Subrecipient shall be responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, Subrecipient shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that Subrecipient seeks, do not exceed the amounts available under the assigning recipient's contract.

4.3.5.2. Impermissible Actions

Subrecipient may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient's reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or "tag-on". A change within the scope of the contract is not a cardinal change or "tag-on".

4.4. The Open Market

Subrecipient will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this Manual.

5. PROCEDURES FOR OPEN MARKET PROCUREMENTS

5.1. Solicitation of Competitive Price Quotes, Bids or Proposals

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for “full and open competition.”

5.2. Receipt and Evaluation of Unsolicited Proposals

Subrecipient may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, Subrecipient must seek competition. To satisfy the requirement for full and open competition, Subrecipient must take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize its receipt of the unsolicited proposal;
- Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought;
- Publicize its interest in acquiring the products or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, Subrecipient may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

5.3. Prequalification

Subrecipient may prequalify bidders, offerors, and products for procurement purposes; however, Subrecipient is not required to do so. The decision of whether to require prequalification for eligibility to participate in procurement shall be made separately for every procurement and shall be approved by the Transportation Director.

If Subrecipient opts to prequalify bidders, offerors, and products for procurement purposes, the following conditions apply:

- Subrecipient must ensure that all prequalification lists it uses are current;
- Subrecipient must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and

- Subrecipient must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Subrecipient is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must Subrecipient expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

5.4. Solicitation Requirements and Restrictions

Every procurement solicitation that Subrecipient issues must include the following information and be advertised in a manner that ensures adequate and open competition.

5.4.1. Description of the Property or Services

The solicitation and the contract awarded thereunder must include a clear and accurate description of Subrecipient's technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

5.4.1.1. Descriptive Elements

Subrecipient will prepare descriptions of property, goods, or service in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.

5.4.1.2. Quantities

Additional quantities or options above Subrecipient's needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.

5.4.1.3. Brand Name or Equal

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

5.4.1.4. Prohibited Practices

Solicitations with requirements that contain features that unduly restrict competition may not be used. Subrecipient shall not:

- Impose unreasonable business requirements for bidders or offerors.
- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.

- Make a noncompetitive award to any person or firm on a retainer contract with Subrecipient if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product, or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to Subrecipient is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to Subrecipient due to other activities, relationships, contracts, or circumstances.
 - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

5.4.2. Evaluation Factors.

All solicitations issued by Subrecipient shall identify all factors to be used in evaluating bids or proposals and their relative importance. At the discretion of the Transportation Director, the actual weighting of evaluation factors may, but is not required to, be communicated to prospective offerors.

5.4.3. Permissible Contract Types

Subrecipient shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

5.4.3.1. Firm Fixed Price

A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

5.4.3.2. Cost Reimbursement

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

5.4.4. Prohibitive or Restricted Contract Types

The following contract types are prohibited or restricted:

5.4.4.1. Cost Plus Percentage of Cost

Cost plus percentage of cost type contracts are prohibited.

5.4.4.2. Time and Materials

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between Subrecipient and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

5.4.5. Other Requirements Affecting the Property or Services to be Acquired

The solicitation and resulting contract must identify those Federal and state requirements that will affect contract scope and performance.

5.4.6. Other Requirements Affecting the Bidder or Offeror and the Contractor

The solicitation and resulting contract must identify all Federal and state requirements that a bidder or offeror must fulfill before and during contract performance.

5.4.7. Reservation of Right to Award to Other Than the Low Bidder or Offeror

The solicitation must specifically reserve Subrecipient's right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, Subrecipient will be obligated to award the contract to the low bidder.

5.4.8. Reservation of Right to Reject All Bids or Offers

The solicitation must specifically reserve Subrecipient's right to reject all bids or offers.

5.5. Methods of Procurement

Subrecipient shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Tennessee and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.327, supplemented by FTA policies that address the needs of FTA recipients.

5.5.1. Micro-Purchases

5.5.1.1. Definition

Micro-purchases are those purchases of products and services that cost \$10,000 or less, as defined by 2 CFR §200.67 (or current threshold established by Federal Acquisition Regulations (FAR)).

5.5.1.2. Approval Authority

Micro-purchases must be approved in writing by one of the following Subrecipient employees:

- Transportation Director

5.5.1.3. Competition

Subrecipient may acquire products and services valued at less than the micro-purchase limit without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.

Micro purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

5.5.1.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the micro-purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Subrecipient's Federally-assisted procurements. In such situations, Subrecipient may divide contracting requirements into smaller tasks or quantities, when economically feasible.

5.5.1.5. Documentation

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made.

5.5.2. Small Purchases

5.5.2.1. Definition

FTA defines small purchases as those purchases of products and services, including construction services that cost greater than \$10,000 but not more than \$250,000.

5.5.2.2. Approval Authority

Small purchases must be approved in writing by one of the following Subrecipient employees:

- Transportation Director

5.5.2.3. Required Competition

Whenever possible, price or rate quotations must be obtained from at least two, but preferably three or more qualified sources. It is the responsibility of Subrecipient to ensure that an adequate number of quotations, bids, or proposals are received.

5.5.2.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Subrecipient's Federally-assisted procurements

5.5.2.5. Documentation

Every small purchase must be documented in Subrecipient's written procurement history file. The level of documentation is stipulated in Section 6.6.1.

For small purchases, price quotations may be oral or written.

5.5.2.6. Special Considerations

Subrecipient may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement. When purchasing from a State contract, Subrecipient must maintain copies of all relevant procurement documents and ensure that the underlying contract was solicited and awarded in compliance with relevant FTA and/or Tennessee requirements.

Subrecipient reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the Transportation Director believes it is in the best interests of Subrecipient to do so.

5.5.3. Formal Purchases

5.5.3.1. Definition

Formal purchases are those purchases of products and services that cost greater than the current Federal threshold of \$250,000.

5.5.3.2. Approval Authority

Large purchases must be approved in writing by the following Subrecipient employees or officials:

- Transportation Director

No further delegation of approval authority for large purchases may be made.

5.5.3.3. Procurement Methods

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method; and
- Competitive Proposal method.

5.5.3.4. Required Competition

Formal bids and competitive proposals must be publicly advertised.

For formal purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.

For formal purchases by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal.

5.5.3.5. Required Documentation

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

5.5.3.6. Special Considerations

Subrecipient may acquire products and services via state contract in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement.

5.5.3.7. Procedural Methods for Sealed Bids

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is lowest in price. The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

- (a) When Appropriate – The sealed bid method of procurement is a preferred method for acquiring products and services that, including construction services, cost greater than \$250,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:
 - (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
 - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
 - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
 - (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
 - (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

- (b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
 - (1) Publicity – The Invitation for Bids must be publicly advertised.
 - i. The Transportation Director shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.
 - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
 - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or

- b. Use of advertisement by electronic means.
- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
 - (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
 - (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
 - (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
 - (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
 - (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

5.5.3.8. Procedural Methods for Competitive Proposals

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to Subrecipient or that is considered to be the “best value” to Subrecipient. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$250,000 when the nature of the procurement does not lend itself to sealed bidding and Subrecipient expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:
- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
 - (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
 - (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.

- (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.
- (b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:
 - (1) Publicity – The Request for Proposals must be publicly advertised.
 - (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
 - (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
 - (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
 - (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to Subrecipient or that represents the “best value” to Subrecipient with price and other factors considered.
 - (6) Best Value – Subrecipient may award a contract to the offeror whose proposal provides the greatest value to Subrecipient. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. Subrecipient must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

5.5.3.9. Two-Step Procurements

Subrecipient may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to Subrecipient’s request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, the second step of the solicitation must result in the attempt to solicit, at a minimum, three bids or proposals from the prospective contractors deemed qualified in the first round. All qualified prospective contractors’ bids or proposals submitted from the first round must be considered.

5.5.3.10. Architectural and Engineering (A&E) Services and Other Services

FTA's enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. § 1101 through 1104, to acquire A&E services.

(a) Qualifications-Based Procurement Procedures Required – Subrecipient must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:

- Program management;
- Construction management;
- Feasibility studies;
- Preliminary engineering;
- Design, architectural, engineering;
- Surveying, mapping; and
- Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

(b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.

(c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:

- (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
- (2) Price – Price is excluded as an evaluation factor.
- (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.
- (4) Next Most Qualified – Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

5.5.3.11. Design-Bid-Build

The design-bid-build procurement method requires separate contracts for design services and for construction.

- (a) Design Services – For design services, Subrecipient must use qualifications-based procurement procedures as described above.
- (b) Construction – Because Subrecipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, it generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

5.5.3.12. Design-Build

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

- (a) Procurement Method Determined by Value – First, Subrecipient must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, Subrecipient will use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.
 - (1) Construction Predominant – The construction costs of a design-build project are usually predominant, so Subrecipient would use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based Brooks Act procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services.
 - (2) Design Services Predominant – In the less usual circumstance in which the cost of most work to be performed will reflect architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, Subrecipient would use qualifications-based procurement procedures based on the Brooks Act.
- (b) Selection Processes – Subrecipient may structure a design-build procurement using one or more steps as described below:

- (1) One-Step Method – Subrecipient may undertake its design-build procurement in a single step.
- (2) Two-Step Method – Another procurement method Subrecipient may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m. This method consists of:
 - i. Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors' technical qualifications and technical approach to the project. Subrecipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - ii. Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.

By using this two-step method, it will not be necessary for Subrecipient to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available.

5.6. Procurement by Other Than Full and Open Competition

Normally, Subrecipient must provide for full and open competition when soliciting bids or proposals. Federal regulations at 2 CFR § 200.320(f)(1) – (4), however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

5.6.1. When Appropriate

Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small or formal purchase procedures, and at least one of the following circumstances are present:

5.6.1.1. Competition Adequacy

After soliciting several sources and receiving an inadequate response, Subrecipient shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If Subrecipient determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, Subrecipient may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

- (a) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, Subrecipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

- (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond Subrecipient’s control. After documenting the determination of adequate competition in the procurement file, the procurement process may continue with the single response.
- (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within Subrecipient’s control. In such situations, Subrecipient must correct all deficiencies in the procurement process that caused competition to be inadequate (e.g., unduly restrictive specification, inadequate advertisement/ dissemination) and then reissue the solicitation, or determine if the procurement can be justified as a sole source award and then follow that path.

5.6.1.2. Sole Source

When Subrecipient requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, Subrecipient may make a sole source award. In addition, when Subrecipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, Subrecipient will consider the change a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
 - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Subrecipient only from one source and has not in the past been available to Subrecipient from another source.
 - (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
 - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Subrecipient’s needs.
- (b) Unusual and Compelling Urgency – Subrecipient may limit the number of sources from which it solicits bids or proposals when Subrecipient has such an unusual and urgent need for the products or services and would be seriously injured unless it were permitted to limit the solicitation. Subrecipient may also limit the solicitation when the

public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.

- (c) When Prohibited – Less than full and open competition is not justified based on:
 - (1) Failure to Plan – Subrecipient’s lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
 - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement.

- (d) Procurement Procedures – The following requirements apply when Subrecipient completes a procurement utilizing less than full and open competition:
 - (1) Potential Sources – Subrecipient must solicit offers from as many potential sources as is practicable under the circumstances.
 - (2) Sole Source Justification – Subrecipient must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the Transportation Director. If Subrecipient decides to solicit an offer from only one source, Subrecipient must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
 - (3) Cost Analysis – Subrecipient must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.

- (e) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the Transportation Director to be in the best interest of Subrecipient, noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA or Tennessee financial assistance. Any such determination must be approved and signed by the Transportation Director.

5.7. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by Subrecipient.

5.7.1. General

When evaluating bids or proposals received in response to a solicitation, Subrecipient shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. Subrecipient may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

5.7.2. Options

The following standards shall apply when awarding contracts that include options:

5.7.2.1. Evaluation Required

In general, Subrecipient must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

5.7.2.2. Evaluation Not Required

Subrecipient need not evaluate bids or offers for any option quantities when it does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests.

5.7.3. Evaluators

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the Transportation Director determines would be necessary or helpful. If Subrecipient lacks qualified personnel within its organization, it may solicit evaluators from other transit organizations or may contract for evaluation services. If it does so, the procurement procedures in this policy will apply to those contracts and to those contractors selected to perform evaluation functions on behalf of Subrecipient.

5.8. Contract Award Requirements

The following standards shall apply to all contract award decisions made by Subrecipient:

5.8.1. Award Only to a Responsible Bidder or Offeror

Subrecipient may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Subrecipient must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility.

Subrecipient must verify that the prospective contractor is not debarred, suspended, or otherwise ineligible by either checking the System for Award Management Exclusions (at SAM.gov), collecting a certification, or adding a clause or condition to the covered transaction. FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred.

As a best practice, Subrecipient should ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by Subrecipient. For every procurement action above the micro-purchase level, Subrecipient must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, Subrecipient must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- (a) Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (b) Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (c) Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (d) Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § Section 5325(j)(2)(B).
- (e) Administrative and Technical Capacity – Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- (f) Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- (g) Financial Resources – Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- (h) Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (i) Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (j) Performance Record – Is able to provide a:
 - (1) Current Performance – Satisfactory current performance record; and

(2) Past Performance – Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:

- i. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
- ii. Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and
- iii. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. TDOT expects Subrecipient to consider the number of the bidder or offeror’s contracts involved and the extent of deficient performance in each contract when making this determination.

5.8.1.1. Rejection of Bids and Proposals

Subrecipient may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. Subrecipient must include a statement in its solicitation document reserving the right to reject all bids or proposals.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor’s wholly owned affiliates to perform other work in connection with the project.

5.9. Independent Cost Estimate and Cost and Price Analysis

5.9.1. Independent Cost Estimate

For every procurement estimated to cost more than the micro-purchase limit, Subrecipient shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.

5.9.2. Cost or Price Analysis

Subrecipient shall perform a cost or price analysis in connection with every procurement over the micro-purchase limit and for all contract modifications.

5.9.2.1. Price Analysis

If Subrecipient determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

5.9.2.2. Cost Analysis

Subrecipient must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS

6.1. Subrecipient Staff Responsibilities

Prior to execution of each third party contract, Subrecipient shall designate a Project Manager to serve as its principal contact with the contractor and as the primary administrator of the contract. The Project Manager assigned to each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

6.2. Administrative Restrictions on the Acquisition of Property and Services

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third party procurements.

6.2.1. Legal Eligibility

The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.

6.2.2. Scope of the Project

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

6.2.3. Period of Performance

Subrecipient will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

6.2.3.1. General Standards

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. Subrecipient will also consider competition, pricing, fairness, and public perception. Subrecipient's procurement files will document its rationale for determining the performance period designated for each contract.

6.2.3.2. Time Extensions

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once Subrecipient awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

6.2.3.3. Authority to Extend

The Subrecipient's Transit Director has the authority to approve and execute contract modifications. The Transportation Director for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Transportation Director shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

6.3. Federal Cost Principles

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

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred by Subrecipient.

6.4. Payment Provisions

Subrecipient will follow the provisions of this section when using FTA funds to support its third party contracts.

6.4.1. Financial Support for the Project

Costs may only be incurred by Subrecipient if FTA and/or TDOT has awarded a financial assistance contract to Subrecipient.

6.4.1.1. Progress Payments

Progress payments are payments for contract work that has not been completed. Subrecipient may use FTA and/or TDOT financial assistance to support progress payments provided it obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

6.4.1.2. Adequate Security for Progress Payments

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress

payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. Subrecipient should always consider the costs associated with providing security (for example, Subrecipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

6.4.1.3. Adequate Documentation

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

6.4.1.4. Percentage of Completion Method

Federal rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. Percentage of completion is typically based on construction performance reports and is verified by onsite technical inspections. Subrecipient, however, may not make progress payments for other than construction contracts based on this percentage method.

6.5. Protections Against Performance Difficulties

Subrecipient shall include provisions in its third party contracts that will reduce potential problems that might occur during contract performance, as follows:

6.5.1. Changes

Subrecipient shall include provisions that address changes and changed conditions in all third party contracts except for routine supply contracts. The language of the provisions may differ depending upon the nature of the contract and the end-item being procured, however, they are intended to achieve the following purposes:

- To give Subrecipient flexibility to unilaterally order changes in the work, which may be necessary due to advances in technology or changes in its requirements;
- To give the contractor a method of suggesting changes to the work, thus improving the quality of the contract end-items;
- To give Subrecipient authority to order additional work that is within the general scope of the contract, thereby avoiding a separate procurement with all of the time and expense associated with undertaking another solicitation;
- To require the contractor to proceed with the changed work and resolve the issue of compensation later. This is important since it gives Subrecipient a unilateral contract right to order changes without having to agree beforehand on the price of the work.

6.5.2. Remedies

Subrecipient shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

6.5.2.1. Liquidated Damages

Subrecipient may use liquidated damages if it reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect Subrecipient's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.

6.5.2.2. Violation or Breach

FTA-funded third party contracts exceeding the simplified acquisition threshold must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor. These provisions are described in Section 39 of the FTA Master Agreement (version 29, February 7, 2022), and include:

- **FTA Interest.** FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, and FTA reserves the right to concur in any settlement or compromise.
- **Notification to FTA.** Subrecipient is required to promptly notify the FTA Regional Counsel of any current or prospective legal matters that may affect the Federal government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming of the Federal government as a party to litigation or a legal disagreement in any forum for any reason.
- **Federal Interest in Recovery.** The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, Subrecipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that Subrecipient receives FTA's prior written concurrence.
- **Enforcement.** Subrecipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

6.5.2.3. Suspension of Work

Subrecipient may include provisions pertaining to suspension of work in its third party contracts.

6.5.2.4. Termination

Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000.

6.6. Contract Administration and Close-Out Documents

Subrecipient shall maintain written records detailing the performance and close-out of the contract, including records relating to:

6.6.1. Contractor Performance

Subrecipient must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.

6.6.2. Contract Deliverables

Subrecipient must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

6.6.3. Contract Changes

Subrecipient must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution.

6.6.4. Contract Payments

Subrecipient must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

6.6.5. Contract Close-Out

Subrecipient must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to Subrecipient, and contract audit and final reconciliation.

6.7. Protest Procedures

6.7.1. Statement of Policy

Subrecipient is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.

Regarding protests of FTA-funded procurements, FTA will not substitute its judgment for that of Subrecipient unless the matter is primarily a Federal concern. Nevertheless, TDOT and FTA can become involved in Subrecipient's administrative decisions when a protest decision is appealed to TDOT.

Subrecipient shall give timely notification to TDOT when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. Subrecipient shall disclose all information about any third party procurement protest to TDOT upon request.

Subrecipient's procedure for addressing third party procurement protests is described in Paragraph 6.9.2 below. Subrecipient shall insert its protest procedure in all formal solicitations.

6.7.2. Subrecipient Staff Responsibilities

The following staff responsibilities shall be assigned in all protests:

- Transportation Director – Responsibilities include: ensuring that Subrecipient's Protest Procedure is included in all solicitation documents; and providing information to and assisting the Subrecipient's Attorney with the resolution of protests.
- Subrecipient Attorney – Responsibilities include: reviewing all procurement protests; and advising and assisting Subrecipient as needed with the resolution of all procurement protests.

6.7.3. Solicitation Provisions

Subrecipient's Transportation Director shall insert the following protest provisions in all solicitation documents:

“Pre-Proposal Protests

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (electronic mail is acceptable) to the Transportation Director in advance of the deadline for submission of bids/proposals.

The Transportation Director may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests. If the deadline for submission of bids/proposals is postponed by the Transportation Director as the result of a protest, the postponement will be announced through an addendum to the solicitation.

The decision by the Transportation Director shall be the final agency decision on the matter but shall be subject to review by TDOT as set forth below.

Pre-Award Protests

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Subrecipient, protests shall be limited to those alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Subrecipient's failure to have or follow its protest procedures, or its failure to review a complaint or protest. Such protests shall be submitted in writing (electronic mail is acceptable) to the Transportation

Director not later than five (5) business days after the recommendation for contract award is announced by Subrecipient.

The Transportation Director may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests prior to actual award of the contract.

The decision by the Transportation Director shall be the final agency decision on the matter but shall be subject to review by TDOT as set forth below.

Requirements for Protests

All protests must be submitted to Subrecipient in writing (electronic mail is acceptable) with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Subrecipient.

Protest Response

The Transportation Director shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Subrecipient will also send a copy of the response to the Protester by electronic mail if the email address is indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Subrecipient response to the protest and Subrecipient will not be responsible for the failure of the Protester to receive the protest response by electronic mail.

Review of Protests by TDOT

All protests involving contracts financed with Federal assistance shall be disclosed to TDOT. Protesters shall exhaust all administrative remedies with Subrecipient prior to pursuing protests with TDOT. TDOT limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to TDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of Subrecipient's final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to TDOT."

**REPORT
CERTIFICATION-RELATED ITEMS
(CMRA)**

June 2023

RE-CERTIFICATION

1. Item No. 763.20
Service: Rest Area Operations and Maintenance

Agency/Location: Tennessee Department of Transportation, 19 designated rest areas in 10 counties through the State.
Annual Price: \$5,701,293.70 for services annually.

Price increase requested: 7.3% price increase requested due to increase in cost of materials, wages, and benefits.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 07/01/23 – 06/30/24.

2. Item No. 763.55
Service: Janitorial Services

Agency/Location: Department of Safety, I-40 Scale House Complex, Mile Marker 372, Knoxville, Tennessee.

Annual Price: \$9,230.40 for Janitorial Services annually. The building is \$769.20 per month or \$2.64 per square foot. The facility has approximately 3,500 square feet.

Price Increase Requested: No price increase has been requested for this contract.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 07/01/23 – 06/30/24.

3. Item No. 763.A192
Service: Janitorial Day Porter Services

Agency/Location: Tennessee Army National Guard Headquarters, Houston Barracks, Department of the Military, 3041 Sidco Drive, Nashville, Tennessee

Annual price: The current price is \$196,895.52 annually, \$16,407.96 monthly, \$1.15 per square foot annually, 170,800 sq. ft.

Price increase requested: No price increase has been requested for this contract.
Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 07/01/23 – 06/30/24

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 37087.

Annual price: \$10,146.08 annually. Lawn care services will include mowing eight (8)
acres for fourteen (14) cycles at \$90.59 an acre, 724.72 per cycle.

Price increase requested: No price increase has been requested for this contract.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 07/01/2023 – 06/30/24

CERTIFICATION

1. Item No. 763.A222

Service: Janitorial Services

Agency/Location: Tennessee Department of Transportation, District 17, 3213 N.
Roan St., Johnson City 37601 and 1825 State St., Morristown, TN 37814

Annual price: Annual total for two buildings is \$15,480. District 17
Admin/Construction Building, 3213 N. Roan St., Johnson City, TN,37601, 4,500 sq. ft.
\$695.00 monthly, \$8,340 annually, \$1.85 per sq. ft. Line 2: District 17 Morristown
Conference Building, 1825 State St., Morristown, TN, 37814, 1,127 sq. ft., \$595
monthly, \$7,140 annually, \$6.34 per sq. ft.

Price increase requested: N/A

Satisfaction: No complaints have been filed.

Certification Requested for Period of 07/01/23 – 06/30/24

July 2023

RE-CERTIFICATION

1. Item No. 763.A218

Service: Ground Maintenance Services

Agency/Location: Department of Mental Health and Substance Abuse Services, Middle Tennessee Mental Health Institute, 221 Stewarts Ferry Pike, Nashville, TN 37214.

Annual Price: \$40,603.78 for Scheduled Grounds Maintenance Services include Mowing, Leaf Collection & Removal, Pruning & Trimming, Weed & Vegetation Eradication, Mulching Application and Mulch Bed Maintenance for approximately 35 acres.

Price increase: 9.9% price increase has been requested due to increases in cost of supplies and labor.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 08/01/23 – 07/31/24

2. Item No: 763.A219

Service: Ground Maintenance Services

Agency/Location: Department of Mental Health and Substance Abuse Services, Central State Cemetery Property, 1501 Murfreesboro Pike, Nashville, TN, 37217.

Annual Price: \$10,494.00 for Scheduled Grounds Maintenance Services include Mowing, Trimming, Weed Eating, and Edging along roadways for approximately 5 acres.

Price increase: 10% price increase has been requested due to increases in cost of supplies and labor.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 08/01/23 – 07/31/24

3. Item No: 763.A220

Service: Grounds Maintenance Services

Agency/Location: Department of Environment and Conservation, Pinson Mounds State Archaeological Area, 460 Ozier Road, Pinson, TN 38366.

Annual Price: \$30,800.00 for Scheduled Grounds Maintenance Services include Mowing, Weed Eating, Edging, and Tree & Hedge Trimming for approximately 13.5 acres.

Price increase: 10% Price increase has been requested due to increases in cost of supplies and labor.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 08/01/23 – 07/31/24

ADDENDUM

1. Item No: 763.A196

Service: Uniforms

Agency/Location: Tennessee Department of Correction

The addendum requests an increase of the contract's maximum liability from \$1.8 million to \$5.4 million. TDOC plans on purchasing new uniforms for all correctional officers, community supervision officers, and various other staff. TDOC estimates that approximately 6,000 staff will receive new uniforms, the cost of which will be approximately \$4.5 million. TDOC is replacing uniforms due to a change in brands from Fechheimer to First Tactical for shirts, pants, and some jackets. The new brand, First Tactical, was brought onto the contract during the last year. It has been used by some tactical community supervision staff. After field testing the brand, TDOC implemented the uniform replacement. TDOC will continue purchasing coats, sweaters, belts, and hats for correctional officers from Fechheimer and Axis7.

Satisfaction: No complaints have been filed.

Addendum is for the period of September 1, 2022, through August 31, 2023, with an effective date of July 21, 2023.

August 2023

RE-CERTIFICATION

1. Item No: 763.A207

Service: Ground Maintenance Services

Agency/Location: Department of Human Services, Tennessee Rehabilitation Center, 955 East 20th Street, Cookeville, TN 38501.

Annual Price: \$2,988.72 Scheduled Ground Maintenance Services include: 1. Mowing and Edging along sidewalk, parking lot, and roadway, each visit. 2. Weed Eating around building, trees and structures on property, each visit. 3. Tree/Hedge Trimming, Mulching and Weed Eradication, as needed or instructed.

Price increase: No price increase has been requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 09/01/23 – 08/31/24

September 2023

RE-CERTIFICATION

1. Item No: 763.A66

Service: Janitorial Services

Agency/Location: Tennessee Department of Transportation, TDOT Region IV Headquarters, 300 Benchmark Place, Jackson, TN, 38801.

Annual price: Total price is \$167,630.04. The current certified price is \$12,403.54 per month, \$148,842.48 annually, \$2.10 per square foot per year. The facility has approximately 70,916 square feet. Day Porter services: The current certified price \$1,565.63 monthly, \$18,787.56 annually, or \$9.03 per hour for an annual total of 2080 hours. The facility has approximately 70,916 square feet.

Price increase: No price increase requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 10/01/23 – 09/30/24

2. Item No: 763.A216

Service: Janitorial Vehicle Prep & Inspection Services

Agency/Location: Department of Military, Tennessee Emergency Management Agency, Southeast Regional Office, 1801 Holtzclaw Ave., Chattanooga, TN 37404.

Annual price: The current certified price is \$23,826.72 annually. Janitorial services will be performed on Wednesdays between the hours of 9:00 am to 3:00 pm with

one 30-minute lunch period and one 15-minute break per workday. New Horizons furnishes all expendables and all cleaning supplies. Inspection services will be performed Tuesday, Wednesday and Thursday between the hours of 9:00 am to 3:00 pm with one 30-minute lunch period and one 15 minute break per work day.

Price increase: No price increase requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 10/01/23 – 09/30/24

3. Item No: 763.A19

Service: Janitorial Services

Agency/Location: Tennessee Air National Guard Base, Nashville International Airport, Nashville, Tennessee.

Annual Price: Current certified price: Total annual price is \$94,968.44. Line 1. \$13,015.01 per month, \$52,060.04 annually or 0.3289 per sq. ft. (4 months). Line 2. \$5,363.55 per month, \$42,908.40 annually 0.3991 per sq. ft. (8 months)

Price increase: No price increase has been requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 10/01/23 – 09/30/24

4. Item No: 763.A130

Service: Drug Testing Kits, Statewide Contract

Agency/Location: Statewide Contract

Annual Price: Total amount of purchases for last year were \$1,477,514.02.

Price increase: No price increase has been requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 10/01/23 – 09/30/24

5. Item No: 763.A169

Service: Grease Trap Services, Statewide Contract

Agency/Location: Statewide Contract

Annual Price: Total amount of purchases for last year were \$258,402.70.

Price increase: No price increase has been requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 10/01/23 – 09/30/24

6. Item No:

Service: Uniforms

Agency/Location: Department of Correction

Annual price: Total sales for past year were \$2,837,165. The new contract maximum liability has been set at \$4 million.

Price increase: The average price increase for all products is 9.8%.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 10/01/23 – 09/30/24

7. Item No: 763.A196

Service: Ground Maintenance Services

Agency/Location: Seven Islands State Birding Park, 2809 Kelly Lane, Kodak, TN 37764.

Annual price: Current certified price is \$600.69 per cycle, \$19,222.17 annually for 32 ccles per year representing \$75.09 per acre.

Price increase: No price increase has been requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 10/01/23 – 09/30/24

October 2023

RE-CERTIFICATION

1. Item No. 763.38c

Service: Continuous Forms and Snap Out Forms, Statewide Contract

Agency/Location: Statewide Contract

Annual Price: The total amount for last year's purchases was \$556,223.47.

Price increase: No price increase has been requested.

Satisfaction: No complaints have been filed.

Re-certification Requested for Period of 11/01/23 – 10/31/24

2. Item No. 763.36ad
Service: Female Sanitary Products, Statewide Contract
Agency/Location: Statewide Contract
Annual Price: Total amount of purchases for last year was \$58,707.34.
Price increase: No price increase has been requested.
Satisfaction: No complaints have been filed.
Re-certification Requested for Period of 11/01/23 – 10/31/24

**REPORT
LIMITATION OF LIABILITY**

	A	B	C	D	E	F	G	H
1	Limitation of Liability Report 06/02/2023 - 10/30/2023							
2	Number	Form	Subject	Description	Status	Submit Date	Owner	Date Approved
3	9003	<u>Limitation of Liability</u>	34800 Life Tech Consumables	This is a sole-source contract that will be utilized for the purchase of DNA Consumables from Life Technology Services. This is a low risk contract since the products and services will be used and consumed quickly. The LOCL was changed to the amount of damages permitted under applicable law in order to facilitate this procurement. This will enable the agency to purchase these consumables in order to continue investigations.	A	6/8/2023	Michael Bentheimer	6/9/2023
4	9004	<u>Limitation of Liability</u>	31701-12268 -Supplier Account Verification	This is a contract to provide supplier account verification services. The supplier will provide products and services, including Positive Pay for Checks and ACHPositive Pay, which are designed to detect and/or deter check and other payment system fraud. A limitation of liability for actual, direct damages resulting from our failure to exercise ordinary care in performing services was negotiated. The implementation of these products and services will significantly reduce the likelihood of certain types of fraudulent transactions. Given these factors, there would be very little potential for risk of loss to the State.	A	6/9/2023	Sharon L Pope	6/9/2023

	A	B	C	D	E	F	G	H
5	9046	<u>Limitation of Liability</u>	32110-T1-SWC3021 Comprehensive Cloud Solutions	This State Wide Contract (SWC) 3021 will be used to purchase cloud solutions to support strategic agency goal of continued enterprise-wide Cloud adoption. This proposed change to limitation of contractor liability would align claims with orders and not total estimated liability. This amendment aligns all existing and new Cloud PAs under SWCs 3020 and 3021. This will create an even playing field for bidders on constant compete orders and statements of work, since each would face the same limitation of claims provision. The State has added several new suppliers to SWCs 3020 and 3021 to increase competition. This LOCL ensures all existing and new PAs align on contractor liability, ensuring an equal playing field for all suppliers. This will result in lower costs on cloud products and services, increased competitive bidding on OEM cloud solutions, timely access to expertise in a wider variety of software and industry specialties and the avoidance of consulting resource constraints.	A	6/20/2023	Michael Gross	6/20/2023
6	9065	<u>Limitation of Liability</u>	32110-T1-SWC3020 Cloud Managed Service Cherry Road LOCL	This PA adds CherryRoad to State Wide contract 3020. Deloitte, Accenture, and NTT Data are currently the primary suppliers on this statewide contract. The State is adding 4 new suppliers to this SWC to increase competition and its supplier network. This LOCLR ensures this PA aligns with the existing suppliers' PAs, ensuring an equal playing field for all suppliers. This contract will be utilized to purchase professional services through statements of work. This proposed change to limitation of contractor liability would align claims with orders and not total estimated liability. This PA adds new sources of supply to the existing statewide contract and aligns the new PAs with the existing PA for Deloitte, the original supplier under this statewide contract. This will create an even playing field for bidders on statements of work, since each would face the same limitation of claims against an order.	A	6/28/2023	Michael Gross	7/3/2023

	A	B	C	D	E	F	G	H
7	9080	<u>Limitation of Liability</u>	34301 Health 34349-21923 DA for No Cost Contracts	This contract involves the collaboration in a hepatitis C virus (“HCV”) infection rapid antibody testing with drop shipping test kits to partners. This is a no-cost contract to engage organizations as small community partners to provide resources to citizens in need of medical testing assistance. These organizations provide test kits for home testing and information/resources should the citizen need additional care. The contract assumes the collaboration in the testing of hepatitis C virus (“HCV”) infection rapid antibody testing with drop shipping test kits to small community partners. The potential risk is extremely low, as the State is simply providing test kits to organizations in exchange for reporting on the distribution of kits.	A	7/6/2023	Terri L Bartlett	7/6/2023
8	9081	<u>Limitation of Liability</u>	34901-01484 AAMVA Limitation of Liability	This is a contract for AAMVANet services, network services, program services, and driver services transactions provided by the American Association of Motor Vehicle Administrators (AAMVA). The Contractor requested that the LOCLR be changed to one times (1xs) the Maximum Liability, including indemnification. The potential risk of liability to the State would be If there is a situation where losses exceed one times the Maximum Liability. Should this occur, the State would be entitled to recover benefits covered by the Contractor’s insurance coverages required to be purchased and maintained by the Contractor under other provisions of this Contract. Therefore, the risk of loss to the State is nominal.	A	7/6/2023	Marki Mascolo	7/7/2023

	A	B	C	D	E	F	G	H
9	9142	<u>Limitation of Liability</u>	34401-99388-Vanderbilt - Peer Mentoring Curriculum	This is a contract to provide Peer-Mentoring Training Curriculum and Evaluation Development with services at a total cost of \$49,862. The Contractor changed the LOCL to one-times (1xs) the maximum liability. This procurement is important in the establishment of a training curriculum and will not impose any significant risk or liability to the agencies being supported, the services rendered, or to any other component of DIDD business. There are no potential risks to the State aside from the maximum contract liability of \$49,862. There is no significant impact of proposed limitation of liability on the State.	A	7/21/2023	Elisha Rousey	7/21/2023
10	9156	<u>Limitation of Liability</u>	32501-Lol	This was a contract to provide water maintenance services in association with the Department of Agriculture. The Contractor requested the removal of the reference to liquidated damages and personal injuries. Since liquidated damages and the potential for personal injuries were not a part of this Contract, the removal of the reference to liquidated damages and personal injuries would not have an adverse impact on the State. The State included the two-times (2xs) Maximum Liability and the additional language beginning with "TO THE EXTENT PERMITTED BY TENNESEE LAW", to further protect the risk to the State.	A	7/25/2023	Joshua Polk	7/25/2023

	A	B	C	D	E	F	G	H
11	9207	<u>Limitation of Liability</u>	swc 107 Computer Data Storage Contract 77359 CONFIDENTIAL	This is a Contract with Iron Mountain Data Management Services to provide a secure and safe environment to store, Computer Data Tapes that are a backup in case of a disaster. It was agreed that Contractor would not be liable for any loss or destruction of documents and media stored by Contractor under this Contract unless Contractor fails to exercise care as a reasonably careful person would exercise under like circumstances. If liable, the amount of Contractor's liability would be related to the costs of loss or destruction of, or damage to any media. The State recognized that this contract had minimum liability and that it was in its best interest to agree to an accommodation in terms and to the full and actual cost of replacing the physical item.	A	8/4/2023	Richard Kotler	8/7/2023
12	9217	<u>Limitation of Liability</u>	SWC 433 Digital Hybrid Key Telephone Systems New Contract	This is State Wide Contract ("SWC") 433 with Norstan to provide Maintenance, Repair, and Replacement of Digital Hybrid Key Telephone Systems to State offices throughout Tennessee at the cost of \$750,000. In exchange for the Contractor agreeing to the addition of two times (2xs) the Estimated Liability, the State agreed to remove any special, incidental and other nondirect damages. The change in the LOCL was a reasonable accommodation between the Contractor and the State.	A	8/10/2023	Richard Kotler	8/11/2023

	A	B	C	D	E	F	G	H
13	9275	<u>Limitation of Liability</u>	US Bank LOL RFP 33701-10122	This contract involved the performance of banking services on behalf of the State. The contract had a maximum liability of approximately \$500,000 and a term of 5 years. Contractor requested that a portion of the State's Limitation of Liability provision be removed. In exchange, the Contractor agreed to accept, without modification, the LOCL and Hold Harmless clauses. It was determined that this was a reasonable and prudent accommodation since the financial services to be provided have minimum risk to the State.	A	8/30/2023	Alyssia Zamora	8/30/2023
14	9281	<u>Limitation of Liability</u>	34800-PWCLoL	This contract involved routine airplane engine maintenance. The engine in an airplane must be maintained in accordance with manufacturer's standards in order to obtain optimal performance and for the engine warranty to remain in effect. The cost of the maintenance service was \$249,000. The Warranty and Limitation of Liability provision proposed by the Contractor limited its liability to negligence and limited its exposure to other types of claims. The State recognized that this contract had minimum liability and that it was in its best interest to agree to an accommodation in terms.	A	8/31/2023	Joshua Polk	8/31/2023

	A	B	C	D	E	F	G	H
15	9309	<u>Limitation of Liability</u>	31786-00174	This Contractor was to provide pharmacy benefit management services to the State, which would include custom clinical programs, specialized care management, formulary management, network management, and an online pharmacy claims processing unit. It was determined that the number of claim relatively low. The Contractor requested that the amount of the limitation of liability be changed to one time (1xs) the total paid claims that have been processed throughout the initial year of the contract. The State's maximum liability was paid upon the sum total of a per-member, per month administrative fee. The change in the LOCL was used to create a reasonable balance between the Contractor and the State.	A	9/12/2023	Heather Pease	9/15/2023
16	9314	<u>Limitation of Liability</u>	33701-42623 Verisk EDI LOL	This Contractor was to provide an Electronic Data Interchange System for the State. This contract contained a Maximum Liability of \$500,000 and for a term of 3-years. The annual liability of the Contractor under this contract was \$166,000. The Contractor requested that the State agree that the Contractor would have no liability beyond the amount specifically provided in the Contract. Because there was mimium risk involved, the State was able to provide this accommodation to the Contractor	A	9/13/2023	Alyssia Zamora	9/18/2023

	A	B	C	D	E	F	G	H
17	9358	<u>Limitation of Liability</u>	32110-3-SWC 422 IT Workforce Professional Services	This StateWide Contract (SWC) 422 wil enable the to provide IT Workforcce Professional Services. The Contractor agreed to the two times (2xs) of Estimated Liability requirement. In addition, the Contractor requested that the State agree that there should be no liability for any indirect, special or consequential damages if such act conflict with state laws or immunities afforded to the State. This language excluding certain acts was used in previous contracts and was advantageous to the State. There was no apparent risk involved in accepting this additional languagage proposed by the vendor.	A	9/29/2023	Ellen Lipinski	9/29/2023
18	9377	<u>Limitation of Liability</u>	33101-TCAP Alternate Assessment (FY2024) (Interim)	This was a StateWide Contract in which the vendor will be providing IT Workforce Professional Services. The Contractor agreed to the two times (2xs) of Estimated Liability requirement. The Contractor requested that the State agree that there should be no liability for indirect, special or consequential damages if such conflict with state laws or immunities afforded to the State. This exception language was used in previous contracts and was advanteous to the State. There was no apparent risk involved in accepting this additional languagage proposed by the Contractor.	D	10/4/2023	Brian Evans	n/a

	A	B	C	D	E	F	G	H
19	9378	<u>Limitation of Liability</u>	33101-TCAP Alternate Assessment (FY2024)	This Contractor will provide Dynamic Learning Maps in the subjects of English, Language Arts and Mathematics. The Contractor is a designated agency of the State of Kansas. Since the State of Kansas is a sovereign entity, it could not agree to the inclusion of an indemnification and hold harmless clause. The LOCL clause was negotiated to reflect that the Contractor will accept responsibility for its negligent acts and omission as may be permitted by applicable law. It was in the best interest of the State to accommodate this request since with was a sole source contract and is needed for continued compliance with both state and federal law. There was nominal risk and this ensures that the State can provide the necessary services that are required by federal and state laws.	D	10/4/2023	Brian Evans	n/a
20	9384	<u>Limitation of Liability</u>	32110-T1-LOCL-SWC3999 SVAR NASPO Dell	This Contractor provides that State with a significant amount of computer and software related services. The Contractor would not agree to the State's standard limitation of liability provision but requested that the State use the NASPO model MA. The Contractor agreed to the two times (2xs) the Estimated Liability and the language found in TCA 12-3-701. The State determined that the modifications were minor and conformed with TCA 12-3-701.	A	10/5/2023	Zohreh Hurd	10/5/2023

	A	B	C	D	E	F	G	H
21	9391	<u>Limitation of Liability</u>	33101-TCAP Alternate Assessment (FY2024)	This Contractor will provide Dynamic Learning Maps in the subjects of English, Language Arts and Mathematics. The Contractor is a designated agency of the State of Kansas. Since the State of Kansas is a sovereign entity, it could not agree to the inclusion of an indemnification and hold harmless clause. The LOCL clause was negotiated to reflect that the Contractor will accept responsibility for its negligent acts and omission as may be permitted by applicable law. It was in the best interest of the State to accommodate this request since with was a sole source contract and is needed for continued compliance with both state and federal law. There was nominal risk and this ensures that the State can provide the necessary services that are required by federal and state educational laws.	A	10/6/2023	Brian Evans	10/7/2023
22	9399	<u>Limitation of Liability</u>	UI Employer Tax System RFP 33701-21221	This Contractor is the project manager for the State's UL Employer Tax System. Due to the complex nature of this assignment, the project presented the State with enhanced liability risks. Therefore, the State required its standard limitation of liability language, with a revised liability clause. This revised clause provided that after the conclusion of the Implementation Phase, the Contractor's liability for all claims arising under this Contract would be limited to twenty-two million eight hundred thirty-eight thousand two hundred dollars (\$22,838,200), provided that the Implementation Phase was successfully completed and accepted. This additional limitation of liability language was added to further protect the State from liability risks.	Pending	10/11/2023	Alyssia Zamora	

	A	B	C	D	E	F	G	H
23	9414	<u>Limitation of Liability</u>	34800 Purchase of Plane Engine	The single payment contract is for the purchase of aircraft engine by TBI. The Contractor would not agree to a two-times (2xs) multiplier but would agree to one-times (1xs) the Maximum Liability multiplier. Permitting the 1xs limitation of liability amount allowed the State to purchase the engine at a significant cost savings. The Contractor is discounting the engine price which will allow the State to purchase a new aircraft engine instead of purchasing a refurbished engine. This purchase will have very little risk and will be beneficial to the State.	A	10/14/2023	Phyllis A Sawyer	10/15/2023
24	9421	<u>Limitation of Liability</u>	32801 LOL Print magazines and Calendars	This Contractor was involved in the printing of all magazines and calendars for TWRA. The Contractor agreed to the State's standard LOCL provision but with the addition of the statement that no intellectual property as defined in TCA 38-14-152(a)(2) would be involved in the scope of duties. The additional of this sentence was not a material modification of the limitation of liability clause since no intellectual property would be at risk with respect to the services performed by this Contractor.	A	10/16/2023	Clyde D Hicks	10/18/2023

	A	B	C	D	E	F	G	H
25	9425	<u>Limitation of Liability</u>	32110-T1-Lol for Contract 77557 AT&T Firstnet	This Statewide Contract("SWC") was scheduled to expire on November 8, 2023. The State had an estimated 2000 users of these services and will add an additional 800 users over the next 18 months. Local governments have over 18,000 first Responder/Public Safety personal covered under this SWC. ATT would not agree to the standard two-times (2xs) the Estimated Liability. Instead, ATT proposed using a 1 times (1xs) liability. This formula was used in the current contract between the State and ATT for these services, and to obtain this critical service for first responders throughout the State, it was determined to use the same 1xs the Estimated Liability. The limitation of liability amount is the only change from the FA Template language for limitation of Contractor's Liability. The specified Estimated Liability is \$7 million which adequately protects the State's interests regarding the potential for claims.	A	10/18/2023	Richard Kotler	10/18/2023
26	9435	<u>Limitation of Liability</u>	34530-46924 No Cost EBT services	This No Cost Contract ("NCC") was necessary in order to ensure a transition period between the new Contractor and the incumbent. The Contract awarded had an effective date of March 1, 2024, but conversion activities were set to begin prior to the Effective Date. The standard template language for the NCC did not include a LOCL provision, which would mean the Contractor would have unlimited liability for these conversion services. Due to the nominal risk involved, the Contractor agreed to allow the State to insert a two times (2xs) the Maximum Liability from the original ITB for these conversion.	On-Hold	10/23/2023	Rebecca Parker	

	A	B	C	D	E	F	G	H
	9447	<u>Limitation of Liability</u>	ATT Firstnet D.18	AT&T's FirstNet Solution consists of a portfolio of wireless voice, texting and data service plans, along with ancillary equipment, services, features and functionalities developed by AT&T under authority granted to it by the First Responder Network Authority (the "FirstNet Authority"). AT&T's FirstNet is designed to maximize the utility of wireless communications by first responders and the personnel and entities that support them. The specified Estimated Liability was in the amount of \$7 million which adequately protects the State. Since the services are to be based on an existing commercial network governed by the FirstNet Authority the risk to the State is nominal.	A	10/27/2023	Richard Kotler	10/27/2023
27								
28								

**REPORT
MEMORANDUM OF UNDERSTANDING
(MOU)**

Number	SWC# / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
391	77045	Pest Control Services	Ellen Lipinski	David Giles dba Middle TN Exterminating	MOU to add five line items	3/8/2023	five new locations requiring monthly pest control services
392	61893	Vehicle Leasing	Andrew Martin	Acme Auto Leasing LLC	MOU to add three lines	4/11/2023	Add Altima S, Rogue FWD, Rogue AWD
393	62027	Elevator Maintenance	Seth Lake	KONE Inc.	MOU to add Line Item	4/24/2023	Added Elevator, Traction Belt Passenger, 4-5 floors, Active, Region 4
394	77120	Uniform, Linen, and Dust Control Rental Services	Seth Lake	Aramark Uniform Services	MOU to add Line Item	5/30/2023	Added Linen Serv, Towel, Bath/Pool, White with Blue Stripes, 84% Cotton/16% Polyester, Minimum Size 27" x 54"
395	77120	Uniform, Linen, and Dust Control Rental Services	Seth Lake	Aramark Uniform Services	MOU to add two line items	5/30/2023	Added two lengths of lab coats to meet safety guidelines with TWRA laboratories.
396	73332	EHR Netsmart	Simeon Ayton	Netsmart	MOU to add the lines items in Section A.10	7/1/2023	Added line items in A.10.
397	73706	Managed Service Provider (MSP)	Sondra Parks	Covendis	MOU to add 3 Job Categories	10/21/2023	3 Administrative Positions: Trafficking Investigator, Intelligence or Data Analyst, and Program Monitor/Auditor
398	73706	Managed Service Provider (MSP)	Sondra Parks	Covendis	MOU to add 2 Job Categories	6/12/2023	Added 2 Administrative Positions: GIS Analyst Intermediate/III and GIS Analyst Advanced/V
399	73706	Managed Service Provider (MSP)	Sondra Parks	Covendis	MOU to add 1 Job Category	7/6/2023	Added 1 Language Communication and Assistance Services Position: Telephonic Interpreter - Spanish and Arabic at an hourly rate.
400	71774	Dental	Sharon Pope	Delta Dental	MOU to add language	7/26/2023	Adding language employer may elset to pay a protion of monthly premimums
401	75625	TWRA Uniforms, Embroidery, Alterations,	Parker Birt	CMS Uniforms & Equipment.	MOU to add new items and substitue items	7/13/2023	Added 33 uniform items and substituted 6 uniform items
402	76198	UI Benefits System	Parker Birt	FAST LP	MOU to add SMS texting line items	7/13/2023	Added 6 SMS Texting line items
403	61893	Vehicle Leasing	Andrew Martin	Acme Auto Leasing LLC	MOU to add line items	7/28/2023	Added 8 lines for F-150 leases

Number	SWC# / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
404	67744	TFACA Educational Books	Karen Conway	Tennessee Firemens Association	MOU for additional books	9/13/2023	To update the curriculum textbooks to newest editions for the required standard changes to support the Firefighting Commission test for certification.
405	72678	33501-225002 50 Emergency Comm	Karen Conway	AT&T CORP	Services related to the establishment of emergency communications and provision of 911-related assistance to ECDs	9/27/2023	-New end site address to be connected to the 911 network. It is common for Emergency Communications districts (ECDs) and PSAPs to move locations upon the completion of a new facility or changes in operations -Charges for optional equipment for those ECDs/PSAPs utilizing the Contracor's hosted controller services.
406	71860	Employee Service Awards	DeRenne Raley	Southern Trophy	Adds items to the contract to provide more offerings in line with changes in workplace	10/27/2023	Added 22 items
407	77045	Pest Control Services	Elle Lipinski	David Giles dba Middle TN Exterminating	Add Military and TDOT locations	10/20/2023	Added 38 new locations needing pest control services.
408	73706	Managed Service Provider (MSP)	Sondra Parks	Covendis	MOU to add 3 Job Categories	7/26/2023	Added 3 Administrative positions to the rate card for Aviation Project Specialist I, II, and II for Dept. of Transporation
409	73706	Managed Service Provider (MSP)	Sondra Parks	Covendis	MOU to add 4 Job Categories	7/21/2023	Added 4 Administrative positions to the rate card for TMC Tech I, TMC Tech II, TMC Tech III, and TMC Shift Supervisor for Dept. of Transportation