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| seal-jpg | **STATE OF TENNESSEETREASURY DEPARTMENT****REQUEST FOR PROPOSALS # 30901-48021****AMENDMENT # 1****FOR RECORDKEEPING, ADMINISTRATION, AND INVESTMENT OPTIONS FOR THE STATE OF TENNESSEE’S OPTIONAL RETIREMENT PROGRAM AND PUBLIC HIGHER EDUCATION 403(b) PLANS** |

**DATE: August 27, 2021**

**RFP # 30901-48021 IS AMENDED AS FOLLOWS:**

1. **This RFP Schedule of Events updates and confirms scheduled RFP dates.** Any event, time, or date containing revised or new text is highlighted.

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| **EVENT** | **TIME (central time zone)** | **DATE** | **Updated or Confirmed** |
| 1. RFP Issued
 |  | August 9, 2021 | Confirmed |
| 1. Disability Accommodation Request Deadline
 | 2:00 p.m. | August 12, 2021 | Confirmed |
| 1. Pre-response Teleconference
 | 2:30 p.m. | August 13, 2021 | Confirmed |
| 1. Notice of Intent to Respond Deadline
 | 2:00 p.m. | August 16, 2021 | Confirmed |
| 1. Written “Questions & Comments” Deadline
 | 2:00 p.m. | August 19, 2021 | Confirmed |
| 1. State Response to Written “Questions & Comments”
 |  | August 27, 2021 | Confirmed |
| 1. Second & Final Written “Questions & Comments” Deadline
 | 2:00 p.m. | September 1, 2021 | Confirmed |
| 1. Final State Response to Written “Questions & Comments”
 |  | September 8, 2021 | Confirmed |
| 1. Technical Response Deadline
 | 2:00 p.m. | September 15, 2021 | Confirmed |
| 1. State Completion of Technical Response Evaluations
 |  | October 18, 2021 | Confirmed |
| 1. State Schedules Respondent Oral Presentations (Respondent Finalists Only)
 |  | October 19, 2021 | Confirmed |
| 1. Cost Proposal Deadline (Respondent Finalists Only)
 | 2:00 p.m. | October 26, 2021 | Confirmed |
| 1. Respondent Oral Presentation (Respondent Finalists Only)
 | 8:00 a.m. - 4:30 p.m. | October 25 – 26, 2021 | Confirmed |
| 1. State Opening & Scoring of Cost Proposals (Respondent Finalists Only)
 |  | October 27, 2021 | Confirmed |
| 1. Negotiations (Optional to the State)
 |  | October 28 – 29, 2021 | Confirmed |
| 1. State Notice of Intent to Award Released andRFP Files Opened for Public Inspection
 |  | November 3, 2021 | Confirmed |
| 1. End of Open File Period
 |  | November 10, 2021 | Confirmed |
| 1. State sends contract to Contractor for signature
 |  | November 12, 2021 | Confirmed |
| 1. Contractor Signature Deadline
 | 2:00 p.m. | November 17, 2021 | Confirmed |

1. **State responses to questions and comments in the table below amend and clarify this RFP.**

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

| **QUESTION / COMMENT** | **STATE RESPONSE** |
| --- | --- |
| 1. If possible please provide the number of unique participants with each vendor. We want to make sure we aren’t double counting any participants that may have accounts with more than one vendor.
 | The accumulation of the information requested could not be obtained by August 27, 2021. However, the State is making every effort to furnish the information in its September 8, 2021 final response to written questions and comments. |
| 1. Are the references and their contacts that are provided as part of the RFP also allowed to be used in questions A9, A10, and A11?
 | Yes. |
| 1. Is the TN ORP planning to move forward with white labeling fund of fund investments in the near-term or are you looking to just determine the capabilities of each vendor?
 | The State has no plan to pursue white-labeling investment options at this time.  |
| 1. Do you anticipate any investment menu changes once you consolidate to 2 vendors? If so could you describe?
 | The State will maintain the authority to make investment menu changes at any time.  |
| 1. Could you please describe the customization you may want for the microsite landing page and the participant website?
 | At a minimum, the State would like to be able to provide plan-specific logos/branding, access to plan-specific information (plan flyers, investment options, etc.), and direct links to Treasury-hosted websites and informational content. |
| 1. Please clarify the use of “mappable assets” in the statement below. Will existing plan assets with the current provider(s) transfer to the new provider in a lump sum at the direction of the employer, or will the current provider(s) require that the participant request an individual transfer of their balance? Page 5: Program Background (ORP) and Page 7: Program Background (403(b)) states “Participants with mappable assets in a plan offered by a closed service provider will have the option of mapping their assets and contributions to one of the successful respondents.  If no choice is made, the default will be to map contributions and assets to the highest scored respondent.”
 | Participants with mappable assets with a current vendor that will become a closed service provider pursuant to this RFP will be given the choice of transferring those mappable assets to a successful respondent. In the event no choice is made, the State will direct that the mappable assets be transferred in full to the highest scoring successful respondent.Non-mappable assets may be transferred only at the direction of the participant. |
| 1. If the existing plan assets can be transferred at the direction of the employer, will the plan assets be mapped to the highest scored respondent?
 | See response to Question 6 above. If there is no participant direction on where to transfer assets from a vendor, the State will direct that the mappable assets be transferred in full to the highest scoring successful respondent. |
| 1. Please provide the number of participants and total assets currently invested in managed accounts across all vendors?
 | AIG Retirement Services and Ameriprise are the only vendors with managed accounts assets. Information about the participants and assets in each vendor’s managed accounts service can be found in the “participant info” tab of RFP Attachment 6.9 and the “participant breakdown” tab of RFP Attachment 6.10. |
| 1. Page 67: Cost Proposal - All Other Services as Detailed in the Pro Forma Contract (RFP Attachment 6.6), please advise if the intent is to provide breakpoint pricing for the tiers provided as well as additional tiered scenarios for consideration.
 | Cost Proposal. For **“All Other Services as Detailed in the *Pro Forma* Contract (RFP Attachment 6.6)**”, each respondent must set forth their own breakpoint asset tiers, which must be an asset based fee as explained and detailed in the first, second and third paragraphs under **“All Other Services as Detailed in the *Pro Forma* Contract (RFP Attachment 6.6)”**. THEN based upon and in accordance with those breakpoint assets tiers that the respondent provides, the respondent must complete the hypotheticals breakpoint asset tiers provided in paragraph four ($250 million, $500 million, $750 million, etc.). |
| 1. For each plan, please provide the total number of unique actively contributing participants and total number of unique participants with a balance.
 | See the State’s response to Question 1 above. |
| 1. Please confirm if participants overlap across the ORP and 403(b) plans? If so, please provide the total number of unique actively contributing participants and the total number of unique participants with a balance across all plans.
 | See the State’s response to Question 1 above. |
| 1. It appears the total assets and number of participants on Participant Info tab of RFP Attachment 6.9 and RFP Attachment 6.10 are not equal to the total assets and participants for each plan on pages 5 and 6, Participation, Assets, and Contributions. Please clarify the differences.
 | Please use the data in RFP Attachment 6.9 and 6.10. We apologize for the discrepancy. |
| 1. Page 67: Cost Proposal - All Other Services as Detailed in the Pro Forma Contract (RFP Attachment 6.6), please clarify if the compensation cap be calculated/converted to a per unique participant basis so that the annual compensation **per unique participant** after the first contract year does not exceed 105% in any subsequent year.
 | No. The fee structure for All Other Services Detailed in the Pro Forma Contract must be an asset based fee as explained and detailed in RFP Attachment 6.3.Please note that a Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information. |
| 1. As an alternative to the asset-based fee structure, can we propose a per unique participant-based fee structure with breakpoints which will ensure that annual compensation per unique participant after the first contract year does not exceed 105% in any subsequent year.
 | The State respectfully declines. |
| 1. A.11. f. (2) Security and Data Retention

Vendor would like to request the following revisions:  The Contractor warrants that it will cooperate with the State in the course of performance of this Contract in order to assist the State with its compliance with State Enterprise Information Security Policies requirements, that may be amended from time to time, and any other state and federal computer security regulations including cooperation and coordination with State computer security officials and other compliance officers required by its regulations. | The State respectfully declines these revisions. |
| 1. A.11. f. (5) Security and Data Retention

Vendor requires the right to perform in its sole discretion any security updates to its system and user access, which may include terminating State and Institution users that have compromised data or have accessed any State or Institution’s data in an unauthorized manner. Due to the nature of such a threat, Vendor must have the ability to terminate unauthorized access swiftly and cannot agree to the added requirement of prior consent/control by the State. Vendor believes it to be in the best interests of all parties to have this control mechanism in place. | See Item 3 below for an amendment to Section A.11.f(5) of the *Pro Forma* Contract (RFP Attachment 6.6. |
| 1. A.11.g.(2)Back-Up Procedures and Disaster Recovery Plan

Vendor is requesting the following changes to the provision below for back-up and DRP:Back-Up Procedures and Disaster Recovery Plan. For Internet site(s) and systems used in the performance of services hereunder, the Contractor shall maintain contingency plans for systems back-up in the event of disaster or malfunction. Such plans shall be as described in the Contractor's Proposal and comply with Section E.4 of this Contract. At a minimum, this shall be accomplished by the Contractor backing-up all Participant data nightly and maintaining at least two (2) back-up cycles off-site in a commercial business facility. Instead, the Contractor will use commercially reasonable efforts to notify the State as soon as reasonably practicable, but no later than five (5) hours, if the Contractor’s DR procedures/controls have been activated as a result of an incident that directly impacts the State. | See Item 4 below for an amendment to Section A.11.g.(2) of the *Pro Forma* Contract (RFP Attachment 6.6. |
| A.15. Investment Management Services – 4th paragraph Vendor acknowledges the States requirement with respect to satisfying fiduciary standards as it relates to investment line-up review and monitoring. We would like to further explore your intentions to utilize an outside consultant, and how their service may coincide with what Vendor provides through Advised Assets Group, LLC for investment advisory | See the State’s response to Question 54 below.Paragraph 4 of Section A.15 of the *Pro Forma* Contract (RFP Attachment 6.6) does not relate to the State utilizing the services of an outside consultant. Instead, the paragraph recognizes that a successful respondent might want to hire an investment consultant as the successful respondent’s subcontractor to select and monitor funds and to advise the successful respondent regarding the investment selection and ongoing performance monitoring as required in Section A.15 of the *Pro Forma* Contract. It is up to the successful respondents as to whether the respondents will perform these services directly or whether to hire an outside consultant to perform those services on behalf of the respondents. |
| 1. A. 24. State Reports

Vendor would like it noted that in performing the state reporting services today on current plans, reports are based off fund year versus fiscal year. Vendor would request the State’s consideration to retain current reporting metrics and methodologies for the ORP and 403(b) Plans. Vendor requests information with respect to the State’s fiscal year as it relates to the ORP and 403(b) Plans. | See Item 17 below for an amendment to Section A.24.k. of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. A.36. Participant Investment Advisory/Guidance Services

Advised Assets Group, LLC requires 90 days’ notice in the event the State terminates or discontinues the investment advisory services. | See Item 6 below for an amendment to Section A.36 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. A.48. Cyber Incidents or Breaches

Vendor shall report to the State any instances of unauthorized disclosure of confidential information. Any such report shall be made by Vendor in the most expedient time possible and without unreasonable delay after the instance has come to the attention of Vendor, provided that such report must be made within three (3) business days after the instance has come to the attention of VendorE.6. Personally Identifiable InformationAdditionally, Vendor agrees to notification timeframes on PII as follows:Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall notify the State as soon as reasonably practicable but no more than three (3) business days: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. | See Item 8 below for an amendment to Section A.48 of the *Pro Forma* Contract (RFP Attachment 6.6).See Item 15 below for an amendment to Section E.6 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| A.50. Annual Performance Standards’ Guarantee Vendor is requesting to retain the current performance guarantees and metrics as provided for under the other TN plans recordkept by Vendor (and as revised in 2020). We are willing to retain the same metrics across plans and propose a monitoring methodology that is plan/contract specific. Vendor would welcome additional conversation on services guarantees. | The State respectfully declines. |
| D.9.b. and D.9.c. Prohibition of Illegal Immigrants With respect to sub-paragraph b., Vendor will use commercially reasonable efforts to request the required semi-annual attestation from any subcontractors used specifically and uniquely in performing services under the Contract that the subcontractor shall not knowingly utilize the services of illegal immigrants.With respect to sub-paragraph c., Vendor is unable to allow the State random inspection rights of Vendor’s personnel records as these employment records are confidential in nature containing PII not to be publicly disclosed or shared with clients. | See Item 10 below for an amendment to Section D.6 of the *Pro Forma* Contract (RFP Attachment 6.6).To the extent the records contain confidential information under state or federal law, the State must keep that information confidential unless otherwise required by law. |
| D.10. Records Vendor agrees to the State’s request for post-termination inspection rights to records or a period of three (3) years as currently agreed to on the State’s Plans.  | The State respectfully declines. This is now a standard, mandated contract language for all Tennessee governmental agencies. |
| D.17. Hold Harmless Vendor can agree to hold the State harmless from third-party claims to the extent resulting from Vendor’s breach of the Agreement, negligence, or willful misconduct. Vendor will not be liable to the State for any damages resulting from acts or omissions undertaken at the direction of the State, or any agent or third party authorized by the State to provide direction to Vendor, including but not limited to prior service providers, investment advisors, or any authorized agent thereof. Additionally, in the event of any suit or claim, Vendor agrees to notify the State as soon as reasonably practicable of such claim or suit, and provide all necessary assistance to respond accordingly. E.3. IndemnityWith respect to indemnity, Vendor agrees to indemnify and hold harmless the State as well as its officers, agents, and employees from and against any and all third party 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. | See Item 11 below for an amendment to Section D.17 the *Pro Forma* Contract (RFP Attachment 6.6).See Item 16 below for an amendment to Section E.3 the *Pro Forma* Contract (RFP Attachment 6.6). |
| D.18. HIPAA Compliance The State has previously agreed and acknowledged that Vendor is not subject to the obligations of HIPPA, however Vendor agrees to maintain strict standards of confidentiality for protected health information to the extent required in the performance of services under the Contract. | The HIPAA provision in the *Pro Forma* contract states on its face that it “shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document”. Consequently, the State declines any revisions to Section D.18 of the *Pro Forma* contract. |
| D.30. Insurance Vendor’s current insurance coverage types and limits are attached for review. We will endeavor to modify the insurance provision as mutually agreed upon by the parties upon award and resulting contract. | See Item 12 below for an amendment to Section D.30 of the *Pro Forma* Contract (RFP Attachment 6.6). Please note that Section D.30 is intended to restore the State following a loss and is not intended for the State to profit from it. Any requests to revise the language of the *Pro Forma* Contract should have been given with enough specificity so the State could entertain the language being proposed. The successful respondents must sign the *Pro Forma* Contract, RFP Attachment 6.6, as amended through this RFP process. The State will not entertain any changes to the *Pro Forma* Contract after the Written Questions & Comments Deadlines detailed in RFP Section 2, Schedule of Events. |
| 1. E.4.a.(3). Hosted Services,Confidential Data, Audit, and Other Requirements

Vendor’s security practices align with the standards of NIST and agrees to provide the State with a SOC 1 Type II, however we don’t feel it’s necessary to agree to the State’s approval of the SOC audit control objectives as such objectives are an industry standard. We undergo SSAE 18 SOC 1 Type II audits, conducted by Deloitte & Touche, LLP, on an annual basis. The report is included with each basic audit package, which is made available via the plan sponsor website within 45 days following plan year end.With respect to the request for a corrective action plan being submitted within 30 days after the audit report is provided, Vendor would like to discuss the technical nature of this request further prior to agreeing to it contractually.  | The State respectfully declines. Should the annual audit identify significant weaknesses, the State would want to know the Contractor was doing its due diligence to address those weaknesses in a timely fashion. Note: Any questions regarding the *Pro Forma* Contract could have been raised during the teleconference and during the Written Questions & Comments Deadlines detailed in RFP Section 2, Schedule of Events. The State expects the successful respondents to sign the *Pro Forma* Contract, RFP Attachment 6.6, as amended through this RFP process. The State will not entertain any changes to the *Pro Forma* Contract after the Written Questions & Comments Deadlines detailed in RFP Section 2, Schedule of Events. |
| 1. E.4.a.(3). Hosted Services,

Confidential Data, Audit, and Other RequirementsWith respect to the use of subcontractors, Vendor uses vendors and suppliers to support ancillary functions across its client base and cannot modify its vendor agreements to conform to contractual requirements with individual clients. That said, our vendor agreements include provisions substantially similar to requirements of the State’s terms and conditions. E.7. Additional Subcontracting Rights. However, if Vendor were to enter into an Agreement with a subcontractor solely and uniquely for the provision of core recordkeeping services to the State under this Contract, Vendor could agree to include “Subcontractors” in the provision of E.4.a.(3), as well as endeavor to comply with Section E.7 for Additional Subcontracting Requirements. **Subcontractors**\*\* Note that the term ‘subcontractor’ is combined throughout as lowercase, as well as a defined term “Subcontractor”, but we were unable to locate the actual definition of the defined (usage) of “Subcontractors”. | See Item 10 below for an amendment to Section D.6 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. E.4.a.(4). Hosted Services, Confidential Data, Audit, and Other Requirements

Vendor agrees to provide the State a summary of the results of a third party penetration test conducted by an industry recognized penetration testing firm. | This meets the requirements of Section E.4.a.(4). |
| E.4.a.(6) Hosted Services, Confidential Data, Audit, and Other RequirementsVendor is requesting the following changes based on its record retention policy: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 written confirmation of destruction to the State as soon as reasonably practicable after destruction. Vendor is required to retain copies of records in accordance with Vendor’s records retention policy and applicable laws, and will also retain data that is commercially impractical to return or destroy (such as data on archival tapes); such retained data shall continue to be subject to obligations of confidentiality and security and will be destroyed in the normal course of Vendor’s business pursuant to its records retention policy. | See Item 14 below for an amendment to Section E.4.a.(6) of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. E.4.b. Minimum Requirements - State’s Enterprise Information Security Policies

Vendor acknowledges the State’s **Enterprise Information Security Policies**.  As such, Vendor is unable to administer highly-customized agreements with each individual client in the areas of privacy and security or customize our privacy-related processes for individual clients, we have provided our Data Privacy & Security Addendum for the State’s consideration. We would be happy to discuss our program with the State, and based on our experience with many other clients, we are confident that our standards and practices will satisfy the State’s requirements. | The State’s EISP is written at a high level and is considered the minimum bar. The State would expect the Contractor to meet the spirit of the EISP and the defined security controls in the environment being proposed. |
| 1. E.4.c. Comptroller Audit Requirements

Vendor acknowledges the State’s comptroller audit requirements. Vendor’s current practices for operational and security audits are as follows. We’d be happy to discuss further to ensure Vendor is meeting the State’s audit requirements to extent required.**Operational**: The State shall have the right with 30 days’ advance notice to Vendor, to review and perform operational and administrative audits (collectively, an “Operational Audit”) of the Services, which shall not exceed more than one per calendar year and will not require Vendor to provide more than 80 hours of assistance. Any Operational Audit requested pursuant to this Section will be performed in a reasonable time, place and manner so as not to disrupt Vendor’s normal business. The State may use a third party to perform such Operational Audit, provided, however, that no third party may perform an Operational Audit hereunder unless the State has first obtained such third party’s signature on a confidentiality agreement reasonably satisfactory to Vendor. Such audit will be limited to Plan records, data and information and will not require Vendor to divulge confidential or proprietary information.**Security**: Vendor agrees to provide the State with its standard information security questionnaire, which currently aligns with the Standardized Information Gathering questionnaire (“SIG”), and its SSAE-18 Type II report. In addition, Vendor shall provide copies of any information security certifications maintained by Vendor. Upon the State’s request, Vendor will provide a written response to an additional 50 questions not covered by the information provided by Vendor, and participate in a teleconference of up to two hours to provide additional information requested by the State. The State agrees that any third parties participating in such audit may be required to sign a confidentiality agreement reasonably acceptable to Vendor. In addition, the State and Vendor may schedule an onsite review of Vendor’s facilities, not to exceed a single day. Such onsite review shall not unreasonably interfere with Vendor’s operations. | The State is fine with discussing with the successful respondents the requirements of this subsection to ensure the successful respondents meet these requirements. |
| 1. E.5. Contractor Commitment to Diversity

Vendor rolled-out a formal Supplier Diversity program earlier this year. This initiative includes a strategic plan for expanding our focus and commitment to greater diversity and inclusion within our company and our communities. Vendor’s Diversity & Inclusion Council is making this a top priority going forward. | It is unclear what question is being asked here. Notwithstanding, the State declines any revisions to Section E.5 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. E.6. Personally Identifiable Information

Vendor is requesting the following revisions as stated below:Upon termination or expiration of the Contract or at the State’s direction at any time in its sole discretion, whichever is earlier, Contractor shall promptly return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII. Vendor is required to retain copies of records in accordance with Vendor’s records retention policy and applicable laws, and will also retain data that is commercially impractical to return or destroy (such as data on archival tapes); such retained data shall continue to be subject to obligations of confidentiality and security and will be destroyed in the normal course of Vendor’s business pursuant to its records retention policy. | See Item 15 below for an amendment to Section E.6 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. We understand pricing is requested to be submitted after finalists have been selected. At that time, is pricing requested to assume all mappable assets move, or just assets from certain identified providers?
 | The State is not able to provide further guidance. |
| 1. Regarding question C.38, what level of master recordkeeping and aggregation is required? What transactions require coordination with legacy providers?
 | Master recordkeeping services are not required. Vendors will only be responsible for transactions related to assets under their direct administration. |
| 1. Please confirm that common remitter services will not be required, as the RFP does not specifically ask for this service.
 | Common remitter services will not be required. |
| 1. Please provide copies of your payroll/indicative data layouts, outbound and feedback?
 | Copies of the TBR and UT payroll file formats that are currently submitted to vendors are provided herein and labeled TBR file Formats (2) and UT file formats, respectively. |
| 1. Do the current payroll vendors anticipate a cost to set up the electronic interface with a new vendor? If yes, can you provide an estimate of the expected fees.
 | The State is not able to answer this question. Banner is the payroll provider for all TBR and LGI Institutions. UT indicates that their own staff would perform any necessary interface work and costs would be based on the duration of the project. |
| 1. The RFP details that payroll files are sent on both a biweekly and monthly basis based on the plan and the vendor. With the State working to consolidate to only two active vendors, what is the intention/expectation for the payroll submissions moving forward for the ORP and the 403(b) plans?
 | There is no intention to change payroll frequencies as a result of the RFP. It is the State’s understanding that each Institution reports ORP and 403(b) contributions on a bi-weekly, semi-monthly, and/or monthly frequency. Vendors should be prepared to accommodate multiple payroll frequencies from each Institution. |
| 1. Will there continue to be 21 separate remittances as detailed below?
* University of TN submitting one file for six UT system institutions
* TBR Central Office submitting one file for TBR Central office and 26 TCATs Each LGI submitting a file, totaling six files per frequency
* Each LGI submitting a file, totaling six files per frequency
* Each community college submitting a file totaling 13 files per frequency, which includes the Chattanooga State Community College.
 | Payroll file submissions are consolidated into one file for all UT campuses and contains all information shared with the vendor.The vendor will receive a separate payroll file for each LGI, the TBR Central Office, each community college, and each TCAT per frequency.Payroll files for each TCAT, except TCAT Chattanooga, will come from the TBR Central Office, but they will be separate files for each individual TCAT. |
| 1. What payroll frequencies will the ORP and each 403(b) plans follow with the two active recordkeepers moving forward?
 | See the State’s response to Question 41 above.  |
| 1. Are financial files consolidated, or does each entity send a financial file for each plan?
* Does this also apply to the indicative/biographical files
 | See the State’s response to Question 42 above. |
| 1. Please confirm the number of day-to-day plan administration contacts we can except to work with in regard to daily administration
 | Approximately 50. Each institution has an administrator that will be the main point of contact for plan administration, and the vendors will interact regularly with State deferred compensation staff. The amount of necessary contact will vary depending on the institution.  |
| 1. Please provide any details regarding how you handle the processing of permissive service credits? Are these sent in batches on a set schedule, or handled as a standard rollover?
 | The State understands that this question has been retracted. |
| 1. It is stated in the RFP that participants with mappable assets in the plan with a closed service provider will have the option of choosing where their assets and futures contributions will be directed. What is the intended process to allow participants to make this election?
 | The State intends for this process to be clarified during the transition period. The State prefers for participants to choose where to direct mappable assets from a closed service provider and intends to provide participants with ample time and information to make an informed decision. |
| 1. Please provide the volume of transactions (enrollments, etc.) that come in via paper forms?
 | See the State’s response to Question 1 above. Note: The State intends to move away from paper forms and statements as much as possible. |
| 1. Can TIAA provide historical stable value account rates? It appears that is what determines if the stable value assets will move in 90 days or 2 years.
 | See the State’s response to Question 1 above. |
| 1. What is the contract anniversary date for the Voya Fixed Plus Acct III? Will the assets of the Fixed Plus Acct III be eligible to move in a lump sum at conversion or will it be subject to the 4 year withdrawal schedule?
 | See the State’s response to Question 1 above. |
| 1. How many participants currently receive statements and documents electronically? How many participants currently have an email on file?
 | See the State’s response to Question 1 above. Note: The State intends to opt participants into eDelivery as much as possible. |
| 1. Please provide a list of any ancillary fees that are currently being charged to the plan and or its participants. i.e) QDRO’s, financial advice, etc.
 | The State does not believe the requested information is necessary to enable respondents to respond to this RFP. |
| 1. Does the plan currently utilize a self-directed brokerage option? If so, please provide the company being used as well as the total assets in the program today.
 | There is currently no self-directed brokerage option in the ORP or the 403(b) Plans. |
| 1. Is the contractor expected to provide fiduciary recommendations, or does the state have an outside provider who can provide this service?
 | The State has an outside investment consultant that provides fiduciary guidance on investment options in the ORP and 403(b) plans. Consequently, the successful respondents are not required to provide this service in an ongoing fashion. Instead, they may be called upon at the State’s discretion to provide additional information about proprietary investments, if applicable, and/or recommendations for additions to the investment lineup; however, such requests are expected to be rare. |
| 1. We understand the intent is to move to two active providers, and participants will have the option of mapping their assets and future contributions to one of the successful respondents. If no choice is made, the default will be to map contributions and assets to the highest scored respondent. How will this election be facilitated?
 | See the State’s response to Question 47 above. |
| 1. The RFP states that currently, the UT 403(b) plan and TBR 403(b) plan maintain separate plan documents. The State may elect to combine the two plan documents into a single plan document in the future. Can you confirm our pricing assumptions should contemplate three plans (ORP, UT 403(b) and TBR 403(b)) or will the State look to combine the plans at the time of transition?
 | The State will maintain separate plan documents for the ORP, TBR 403(b) Plan, and UT 403(b) Plan after the transition. |
| 1. The incoming materials included the plan document for the UT 403(b). Is there a separate plan document for the TBR 403(b)? If so, can you please share the document and any amendments?
 | The Tennessee Board of Regents 403(b) Plan Document was included as Contract Amendment 2 to the *Pro Forma* Contract (RFP Attachment 6.6). Here is a link to the site where the RFP was posted: https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities1.html |
| 1. Pricing may fluctuate depending on the two providers selected (i.e., mappable assets available by vendor and participant elections). Given this, are there specific assumptions the State would like providers to use in developing their cost proposal (i.e., 50% of all mappable assets)?
 | The State is not able to provide further guidance. |
| 1. The RFP asks about the vendors ability to act in a lead vendor capacity, yet the cost proposal does not appear to provide for an associated fee point. Additionally, there are operational functions included in the pro forma contract that are typically supported by a lead vendor and not generally part of the service offering in a side-by-side, multi-vendor arrangement. Is there an opportunity for vendors to include an alternate pricing scenario, that contemplates lead provider services, for the State's consideration?
 | The RFP does not ask for lead vendor/master recordkeeper services. The cost proposal must not include pricing for these services. Please note that a Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information. |
| 1. Who is determining eligibility for, and calculation of, the special 15-year catch-up contributions currently? Can you provide more detail around your expectations of the provider in supporting the 15-year catch up going forward? Are you looking for the provider to calculate and report to the State or manage participant elections? What is the current utilization?
 | The 15-year catch-up is only allowed in the UT 403(b) Plan and utilization is low. UT determines eligibility and calculation of allowable contributions. The State would like the vendor to be able to account for 15-year catch-up contributions as part of its monitoring of deferral limits and assist the State and the Institutions with communicating how to properly utilize the provision and identifying those who may have made 15-year catch-up contributions in error. The State is not asking the vendor to calculate or manage participant elections at this time. |
| 1. With multiple providers in place currently, how are participant deferral election/statutory required contributions reconciled today (i.e., ensuring contributions sent match participant elections)?
 | There is currently no systematic process in place between the State and the vendors to reconcile participant deferral election/statutory required contributions. Manual audits happen on a case-by-case basis. Vendors will not be responsible for identifying compliance issues that arise from participant contributions to another vendor. |
| 1. Can you confirm that the Contract Attachment 5 is intended to be executed at the time of contract award rather than completed with our RFP submission?
 | Contract Attachment 5 is to be signed by the successful respondents at the time the contract is executed. |
| 1. Is the State amenable to the callouts and clarification shared below (64 – 104) regarding the pro forma contract, and other sections of the RFP, or do they preclude us from moving forward in the search process?
 | See responses to Questions 64 – 104 below. |
| 1. Understanding the constraints of state law, is the State willing to offer any indemnification or limitation of liability?
 | See Item 13 below for an amendment to Section D. of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. On-Site

What are the expectations for on-site appointment days by campus?  | The State expects the vendor to be able to service all participant requests for meetings with field representatives within a reasonable amount of time and that sufficient time be devoted to the meetings to allow them to be of high quality. The State understands that many participants may prefer to conduct field representative appointments virtually for the foreseeable future, but the vendor must maintain the ability for in-person meetings when preferable/needed for participants and Institutions. |
| 1. Investment Management

How do you view the role of the vendors in the selection and removal of investment options offered in the plans?  | The State, in consultation with an outside investment consultant, is solely responsible for the selection, monitoring, and removal of investment options in the ORP and the Plans. The successful respondents are not required to provide this service in an ongoing fashion. Instead, they may be called upon at the State’s discretion to provide additional information about proprietary investments, if applicable, and/or recommendations for additions to the investment lineup; however, such requests are expected to be rare. |
| 1. Investment Management

What are the relevant Tennessee fiduciary laws, cases, and other authority that will apply to the provision of the investment management services described in A.15 to the State?  | The State believes Section A.15 of the *Pro Forma* Contract (RFP Attachment 6.6) speaks for itself; namely, “The Contractor shall act as a fiduciary to Participants when selecting Investment products to recommend to the State. The Contractor shall be deemed to have satisfied this fiduciary standard by making a good faith recommendation accompanied by a written rationale for its recommendation and disclosure of the conflicts of interest applicable to all product recommendations, provided the Contractor at all times recommends appropriate Investment products for a primary retirement plan. Alternatively, potential conflicts may be resolved by the Contractor hiring an investment consultant as a subcontractor pursuant to Section D.6. of this Contract below to select and monitor funds and to advise the Contractor regarding investment selection and ongoing performance monitoring. The Contractor shall document the justifications for the Investment recommendation, and the monitoring process used under this Section A.15. The Contractor shall further prepare and maintain a current list of approved Investment products offered by the Contractor to Participants pursuant to this Section.” |
| 1. Investment Management

What are the relevant Tennessee fiduciary laws, cases, and other authority that will apply to the provision of the participant investment advisory/guidance services described in A.36 to participants? | The State believes this is self-explanatory. However, the State expects the successful respondent to act on behalf of the Participants in a manner consistent with Tennessee Code Annotated, Section 35-14-107, the prudent investment rule pursuant to Tennessee Code Annotated, Section 35-14-103 and the standard of care pursuant to Tennessee Code Annotated, Section 35-14-104 and other applicable State and federal laws and regulations. |
| 1. Investment Management

What do you mean by “The Contractor shall act as a fiduciary to Participants when selecting Investment products to recommend to the State”? Which fiduciary standard(s) of conduct will apply to the Contractor? | See the State’s response to Question 68 above. |
| 1. Investment Management

With respect to the monitoring process used under Section A.15, do you expect the Contractor to (1) continually monitor products’ investment performance on a daily basis or (2) provide analysis, reports and recommendations with respect to the Investment products at specific points in time (e.g., the last business day of each calendar quarter)? | See the State’s response to Question 66 above. |
| 1. RFP Attachment 6.1, Statement of Certifications and Assurances

We would like to provide clarification to the Statement of Certifications and Assurances.1. This document contains initial comments to the RFP and Attachments 6.1 through 6.6.2. This document contains initial comments to the RFP and Attachments 6.1 through 6.6.3. This document contains initial comments to Pro Forma Contract. We have included a sample services agreement and it is our expectation is for the parties to negotiate an agreement in good faith based on the material presented in the sample agreement incorporating responses included herein and in subsequent responses as part of the search.4. During the contract negotiation stage, the parties should work together to ensure all relevant commitments, including applicable items from the RFP are included in the final agreement.a. We will comply with laws applicable to us as a provider of the Services.b. We maintain an Inclusive & Respectful Workplace (prohibiting discrimination and harassment) Policy but are not a federal contractor or subcontractor. Since we are not subject to these regulations we will not agree to these provisions.c. We are not an educational institution receiving federal aid and are not subject to this regulation, as such we will not agree to these provisions.d. We are an equal opportunity employer. However, we are not a federal contractor or subcontractor and do not maintain affirmative action plans. Consequently, we will not agree to these provisions.e. Contractor agrees to comply with the American With Disabilities Act as applicable to Contractor as a provider of the services.10. Iran divestment Act. To the best of Contractor’s knowledge, Contractor does not contract with parties engaged in investment activities in Iran and is not on the list referenced in Tenn. Code Ann. § 12-12-106. | Any requests to revise the RFP, including its Attachments 6.1 through 6.6, should be given with enough specificity so the State could entertain the language being proposed. The State will not entertain any changes to the RFP or its attachments after the Written Questions & Comments Deadlines detailed in RFP Section 2, Schedule of Events. The successful respondents must sign the *Pro Forma* Contract, RFP Attachment 6.6, as amended through this RFP process.The State expects the successful respondents to comply with all *applicable* laws listed in Paragraph 5 of the Statement of Certifications and Assurances (RFP Attachment 6.1). The Technical Response of each respondent must include the Statement of Certifications and Assurances and the Statement must be signed by each respondent without exception or qualification. Otherwise, the respondent’s response will be deemed non-responsive and rejected. |
| 1. RFP Attachment 6.3, Cost Proposal (and C3. Payment Methodology)

RFP Attachment 6.3, Cost Proposal, provides detail on the State's fee structure and assumptions. It includes detail on the basis for the fee assessment (i.e., first year is based on assets under administration at the start date. Subsequent years are based on the average monthly assets for the previous year). Our asset-based fees are assessed quarterly based on the average quarterly balance. | See Item 18 below for an amendment to Section C.3.b(4) of the *Pro Forma* Contract (RFP Attachment 6.6). See also Item 19 below for an amendment to the Cost Proposal & Scoring Guide (RFP Attachment 6.3). |
| 1. **Directed Framework** A.15, A.20.

Contractor will follow the State’s direction when providing services and will not interpret plan provisions, provide fiduciary advice regarding investments, nor exercise any discretionary decision-making. Currently, Contractor’s affiliate will only act as a fiduciary in the limited context of the managed account services. For Contractor’s proposed language please see Section 2. Directions in the Sample Agreement.  | The State is requesting the services as outlined in Section A.15 of the *Pro Forma* Contract. To the extent that the successful respondents (Contractors) make investment product recommendations to the State as provided in Section A.15, the Contractor “shall be deemed to have satisfied this fiduciary standard by making a good faith recommendation accompanied by a written rationale for its recommendation and disclosure of the conflicts of interest applicable to all product recommendations, provided the Contractor at all times recommends appropriate Investment products for a primary retirement plan. Alternatively, potential conflicts may be resolved by the Contractor hiring an investment consultant as a subcontractor pursuant to Section D.6. of this Contract below to select and monitor funds and to advise the Contractor regarding investment selection and ongoing performance monitoring”.Neither Section A.20. or any other provision of the *Pro Forma* contract is requesting the successful respondent to “interpret” the respective Plans or to otherwise exercise any discretionary decision-making. |
| 1. **Compliance Responsibility** A.28, A.31,E.6.

Contractor will comply with laws applicable to the Contractor as a provider of the Services. Contractor will agree to perform services in accordance with the agreement, including provisions intended to ensure the State’s compliance with certain laws but cannot more generally ensure the State remains in compliance with laws applicable to the Plan or the State’s compliance with law as a Sponsor of the Plan.We offer plan design and other consulting/compliance services on a fee for service basis through our Workplace Consulting group.For Contractor’s proposed language please see Section 11.01. General Compliance in the Sample Agreement. | The intent of Sections A.28 and A.31 of the *Pro Forma* Contract is that the State wants the successful respondents’ support, if necessary, in making sure the plans operate in accordance with prevailing laws and regulations governing 401(a) and 403(b) plans by providing meaningful input. For example, if the State desired to put loans in place, we would need input from the successful respondents. |
| 1. **Business Continuity** A.33.

Consistent with industry standards Contractor will provide a summary of its disaster recovery and backup processes but does not engage in client level disaster recovery tests.For Contractor’s proposed language please see Schedule D, Information Security in the Sample Agreement. | The State does not expect State (client) specific disaster recovery testing and that is not being requested in either Section A.33 or Section E.4 of the *Pro Forma* Contract. |
| 1. **Site Visits** A.34.

To the extent the “due diligence review” is regarded as an operational or service audit in support of the Plan Contractor would not agree to cover expenses. Contractor would need reasonable guidelines and limitations (such as reasonable notice, during business hours, confidentiality obligations) to minimize disruptions to business operations.For Contractor’s proposed language please see Section 8.02 and 8.04 in the Sample Agreement. | The due diligence review is not an audit. It is more of a tour and strategic planning session, to the extent it will occur. See Item 5 below for an amendment to Section A.34 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Self-Directed Brokerage Account Window** A.37.

Contractor has included its Self-Directed Brokerage offering and does not support a 3rd party brokerage offering.For Contractor’s proposed language please see Attachment A, Investment Options, in the Sample Agreement. | It is unclear what question is being asked here. Notwithstanding, the State declines any revisions to Section A.37 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Independence of Services** A.42.

While Contractor does not have an attestation document, Contractor agrees that unless otherwise authorized, Contractor shall not use Personal Data to communicate to Participants for the purpose of selling any non-Plan products and services, unless a Plan Participant has expressed a financial need or interest. | The State respectfully declines to make the proposed revisions to Section A.42 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Representations** A.43

Contractor will agree to represent that to the best of its current knowledge statements (a) through (d) are accurate. | See Item 7 below for an amendment to Section A.43 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Errors** A.45.

If Contractor causes an error, it shall correct or re-perform the service provided it is reasonably necessary and practical under the circumstances. Contractor will bear the proportion of the total costs and expenses related to the correction or re-performance equivalent to its proportion of responsibility. Contractor would propose whichever party is responsible for making the plan whole control the recovery efforts including possible litigation.For Contractor’s proposed language please see item 1.9, Error Correction in the DC Terms & Conditions, of the Sample Agreement. | Section A.45 of the *Pro Forma* Contract (RFP Attachment 6.6) is consistent in all respects with this comment. Consequently, the State declines making any modifications to Section A.45. |
| 1. **Notice of Lobbyist.** A.46.

Contractor would like further information as to the scope of advocacy efforts which would require disclosure under this provision. | As provided in Tenn. Code Ann. § 3-6-301(15)(A), “lobby” means “to communicate, directly or indirectly, with any official in the legislative branch or executive branch for the purpose of influencing any legislative action or administrative action”, except as otherwise provided in Tenn. Code Ann. § 3-6-301. A “lobbyist” means “any person who engages in lobbying for compensation”. *See*, Tenn. Code Ann. § 3-6-301(17). |
| 1. **Applicable Gifts and Solicitations Policy** A.52

Contractor will adhere to its Business Entertainment and Workplace Gifts Policy. | The State excepts the successful respondents to comply with Section A.52 of the *Pro Forma* Contract, which provides that the successful respondents “shall not offer to give, or give, any gift to any employee of the State or to any member of a Board, Commission or Committee administratively attached to the State that would violate the State’s Gifts and Solicitations Policy, included as Contract Attachment 4 to this Contract”. Consequently, the State declines any revisions to Section A.52. |
| 1. **Termination** D.4., D.5.

Contractor proposes a mutual right to terminate for convenience upon 180 days prior notice. Contractor will agree to a mutual right to terminate for cause with a 60-day cure period.For Contractor’s proposed language please see 4.02 Termination, of the Sample Agreement. | The State respectfully declines the modifications to Section D.4 of the *Pro Forma* Contract. See Item 9 below for an amendment to Section D.5 the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Assignment**  D.6.

Contractor agrees not to assign the Agreement without the State’s consent except to the extent such assignment is to a subsidiary of affiliate. | See Item 10 before for an amendment to Section D.6 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **General Contracting Terms** 4.4.

For Contractor’s proposed language please see 13.03, Assignment of the Sample Agreement. | See response to Question 84 above. |
| 1. **Assignment and Subcontracting** D.6., D.9.b., E.4.c.

Contractor will provide a current list of existing subcontractors. Contractor’s subcontractors are used across its service platform and decisions regarding its subcontractors must be retained by Contractor. Contractor will not permit Client audits of its subcontractors.For Contractor’s proposed language please see 14.14, Subcontracting of the Sample Agreement. | See Item 10 below for an amendment to Section D.6 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Non-Discrimination** D.8.

Contractor maintains an Inclusive & Respectful Workplace (prohibiting discrimination and harassment) Policy and is an equal opportunity employer and would appreciate additional information regarding how we could provide “proof of non-discrimination”. Contractor agrees to abide by and comply with all non-discrimination laws applicable to Contractor as an employer and provider of the services. | Many times this comes in the form of an official company or business policy (e.g., employment manual, etc.) against discrimination, training on Titles 6 and 7, or any other evidence the contractor would like to offer to support proof of a policy of nondiscrimination. |
| 1. **Prohibition of Illegal Immigrants** D.9.

Contractor agrees to not knowingly utilize the services of an illegal immigrant in the United States in the performance of this Agreement or knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this Agreement.Contractor proposes incorporating Section 29. Illegal Immigrants of the existing Recordkeeping Agreement into the agreement covering these services.For Contractor’s proposed language please see 14.16, Illegal Immigrants of the Sample Agreement. | Other than as amended herein, the State respectfully declines any revisions to Section D.9. |
| 1. **Records** D.10.

Contractor will maintain records for the period of time required by legal, regulatory and/or business requirements that are applicable to Contractor as a provider of the services.For Contractor’s proposed language please see 6.03, Data Management of the Sample Agreement. | The State respectfully declines. This is standard, mandated contract language for all Tennessee governmental agencies. |
| 1. **Monitoring** D.10.

Contractor will agree to make records and reports of its activities as provide of these services available to the State as detailed in the Audit section of the Sample Agreement.For Contractor’s proposed language please see 8.0. Audits and Assessments of the Sample Agreement. | The State respectfully declines. This is standard, mandated contract language for all Tennessee governmental agencies. |
| 1. **Patient Protection and Affordable Care Act.** D.15.

Contractor does not expect this provision to apply to Contractor as a provider of the services contemplated herein and would not include them an agreement detailing those services. | The State expects the Contractor to comply with the Patient Protection and Affordable Care Act with respect to itself and its employees to the extent it is applicable. Consequently, the State declines any revisions to Section D.15. This is standard, mandated contract language for all Tennessee governmental agencies. |
| 1. **Indemnification** D.16., D.17.

Contractor will indemnify the State for third-party claims resulting from Contractor’s negligence, willful misconduct or breach of the agreement. To the extent permitted by the laws of Tennessee, the State will indemnify Contractor for third-party claims or regulatory proceedings to the extent they are the result of any act done, or an act failed to be done, by any individual or person with respect to the plans.In accordance with industry standards, certain higher risk services performed by Contractor’s consulting team may require a limitation of its liability reasonably related to the relevant fees collected for those services. The need for a limitation of liability would be dependent on the final scope of service and service model for the State Plans. Examples could include services such as eligibility for 15-year catch up and contribution/deferral reconciliation.Neither party shall be liable to the other party for any indirect, special, consequential or punitive damages, including, but not limited to, loss of business or loss of profits, regardless of the form of action, which may arise from the performance, nonperformance, default or other breach of this Agreement.For Contractor’s proposed language please see 9.0. Indemnification of the Sample Agreement. | See Item 11 below for an amendment to Section D.17 of the *Pro Forma* Contract (RFP Attachment 6.6). See also Item 13 below for an amendment to Section D. of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **HIPAA Compliance** D.18.

This provision does not apply to Contractor as a provider of the services and it would not agree to include them in a related service agreement. | See the State’s response to Question 26 above. |
| 1. **Tennessee Department of Revenue Registration** D.20.

Contractor is not an employee of the State and therefore would not include this provision in the agreement. | Section D.20 of the *Pro Forma* Contract states if “applicable”. Consequently, the State declines any revisions to Section D.20 of the *Pro Forma* Contract. See also the State’s response to Question 105 below. |
| 1. **Debarment and Suspension** D.21.

Contractor is not aware of any employees subject to Debarment and/or Suspension under this provision. | It is unclear what question is being asked here. Notwithstanding, the State declines any revisions to Section D.21 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Force Majeure** D.22.

Contractor would consider a force majeure event impacting its subcontractors to also impact itself. After 10 days of downtime the State may temporarily move to another provider.For Contractor’s proposed language please see 14.13. Force Majeure of the Sample Agreement. | See Item 10 below for an amendment to Section D.6 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Incorporating Additional Documents** D.28.

Contractor proposes an agreement negotiated by both parties be the sole governing document regarding the services and obligations under consideration. | The State respectfully declines. |
| 1. **Iran Divestment** D.29.

To the best of Contractor’s knowledge, Contractor does not contract with parties engaged in investment activities in Iran and is not on the list referenced in Tenn. Code Ann. § 12-12-106. | The State declines any revisions to Section D.29 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. **Insurance** D.30.

Contractor has revised the provided Insurance clauses and incorporated them into the attached Sample Agreement. Contractor will provide Clients evidence of the insurance policies but not copies of the policies.For Contractor’s proposed revisions please see 14.14. Insurance of the Sample Agreement. | See Item 12 below for an amendment to Section D.30 of the *Pro Forma* Contract (RFP Attachment 6.6). Please note that Section D.30 is intended to restore the State following a loss and is not intended for the State to profit from it. |
| 1. **Sales and Use Tax** D.31.

Contractor does not expect this is provision to apply to Contractor as a provider of the services contemplated herein and would not include them an agreement detailing those services. | Section D.31 of the *Pro Forma* Contract states on its face that it applies “to the extent applicable”. Consequently, the State declines any revisions to Section D.31. This is standard, mandated contract language for all Tennessee governmental agencies. |
| 1. **Confidentiality** D.32

As noted above, Contractor applies the same robust security controls across its client base and proposes that the Contractor’s Information Security Schedule be incorporated into the agreement with reasonable edits negotiated in good faith to address concerns raised by the State’s Security Policies.For Contractor’s proposed language please see 5.0 Confidentiality, 6.0 Data, Security, and Fraud Prevention, and Schedule D. Information Security in the Sample Agreement. | The State respectfully disagrees. |
| 1. **State Law** E.2.

Contractor does not expect this is provision to apply to Contractor as a provider of the services contemplated herein and would not include them an agreement detailing those services. | The State assumes you are referring to “E.2. Printing Authorization”. If so and if Section E.2 is applicable, then the provision must apply. |
| 1. **Contractor Commitment to Diversity** E.5.

Contractor does not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, disability hiring, or any other form of unlawful discrimination in its solicitation, selection, or treatment of employees, subcontractors, vendors or suppliers. Contractor does not have an affirmative action policy and is not able to file such reports on the State’s system. | The *Contractor Commitment to Diversity* is not related in any way to an affirmative action policy. As indicated in Section E.5, the statement is only reaffirming the respondent’s response to Section B.15 of RFP Attachment 6.2 if diversity businesses will be utilized in the contract. If so, the respondent is to report periodically the participation of the diversity businesses in the contract. |
| 1. **PII & HIPPA** E.6., E.7.

These provisions do not apply to Contractor as a provider of the services and it would not agree to include them in a related service agreement. | With respect to Personally Identifiable Information (Section E.6 of the *Pro Forma* Contract), the successful respondents may very well have access to the personally identifiable information of participants in the ORP and 403(b) plans such as social security numbers. Consequently, and to the extent the successful respondents have access to such information, the respondents shall comply with Section E.6 of the *Pro Forma* Contract, as amended in Item 15 below.See the State’s response to Question 26 above. Consequently, the State declines any revisions to Section D.18 or to Section E.7 of the *Pro Forma* Contract. |
| 1. Page 17

4.7. Professional Licensure and Department of Revenue Registration4.7.3. Before a Contract resulting from this RFP is signed, the respective apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award the contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. To register, please visit the Department of Revenue’s Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: <https://tntap.tn.gov/eservices/_/#1>**Exception:** There is no Tennessee sales tax on the services under this contract, therefore, section 4.7.3 of the Professional Licensure and Department of Revenue Registration section is not applicable.  | Section 4.7.3 specifically says “The State shall not award the contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement”. Consequently, all that a successful respondent will need to do is contact the Tennessee Department of Revenue taxpayer services division to obtain a certificate showing that the respondent is exempt. This is a statutory requirement and, consequently, the State cannot modify this provision. *See*, Tenn. Code Ann. §§ 67-6-601 – 608. |
| 1. Page 99

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 and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.**Exception: 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”),and does not cure such violation within a mutually agreed time following notice thereof, the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract. | Please see Item 9 below for an amendment to Section D.5 of the *Pro Forma* Contract (RFP Attachment 6.6). |
| 1. Page 101.

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.**Exception:** Vendor acknowledges its responsibility for compliance with any applicable legal and regulatory requirements, including those under PPACA. We are not aware of any basis for potential State liability for such compliance in relation to the proposed services. Nevertheless, Vendor will be happy to establish mutually agreed commitments with regard to such compliance as it may relate to the proposed services. | See State’s Response to Question 91 above.Any requests to revise the language of the *Pro Forma* Contract should have been given with enough specificity so the State could entertain the language being proposed. The successful respondents must sign the *Pro Forma* Contract, RFP Attachment 6.6, as amended through this RFP process. The State will not entertain any changes to the *Pro Forma* Contract after the Written Questions & Comments Deadlines detailed in RFP Section 2, Schedule of Events. |
| 1. Page 101

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.**Exception: 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.~~ | The State respectfully declines. |
| 1. Page 101

D.17. 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.**Exception:** Vendor is willing to enter into a mutually agreed upon contract provision to indemnify the Plan Sponsor for loss arising from specified errors, including those arising from gross negligence or willful misconduct of Vendor employees. | See Item 11 below for an amendment to Section D.17 the *Pro Forma* Contract. See also the State’s response to Question 107 above. |
| 1. Page 101

D.18. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Health Information Technology for Economic and Clinical Health (“HITECH”) Act and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Contract.a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.**Exception**: There are no HIPAA covered products being offered by Vendor, therefore HIPAA does not apply. | See the State’s response to Question 26 above. |
| 1. Page 102

D.19. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.**Exception:** The Tennessee Consolidated Retirement System section is not applicable to a corporate contractor. | Section D.19 of the *Pro Forma* Contract applies only if applicable. Consequently, the State declines any revisions to Section D.19. This is standard, mandated contract language for all Tennessee governmental agencies. |
| 1. Page 104. The Vendor requests the following revisions to Section D.30, Insurance.

D.30. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to ~~amend or require~~ request additional insurance coverage, coverage amounts, and endorsements required under this Contract, subject to mutual agreement of Contractor. 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~~ The general liability, auto liability and cyber risk insurance policies will ~~must~~ be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State, with respect to the State’s additional insured status under these policies. . Contractor agrees to name the State as an additional insured on all required ~~ny~~ insurance policies ~~y~~ with the exception of workers’ compensation (employer liability), crime insurance and professional liability (errors and omissions) insurance. All policies except crime insurance and professional liability insurance 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 contract Effective Date and again ~~thirty (30) calendar days before~~ within ten (10) days of 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, verifying its self-insurance program and limits~~. detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.~~ The State reserves the right to require complete, ~~certified~~ copies of ~~all required insurance policies, including~~ additional insured, primary, non-contributory and waiver of subrogation endorsements or policy language, as applicable ~~endorsements~~ required by these specifications, along with production of the insurance certificates. ~~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”) Insurance1) 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 and two million dollars ($2,000,000) general aggregate. ~~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 Insurance1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:i. Workers’ compensation in compliance with TN statutory requirements for all Company employees for injuries or death arising out of or within the scope of their employment with contractor ~~in an amount not less than one million dollars ($1,000,000)~~ and including employer’s liability coverage 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 and one million dollars ($1,000,000) aggregate 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 Insurance1)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 third party bodily injury/property damage coverage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.d.~~Technology~~ Professional Liability (Errors & Omissions) and /Cyber Liability Insurance1) The Contractor shall maintain ~~technology~~ professional liability (errors & omissions) and /cyber liability insurance appropriate to the Contractor’s profession in an amount not less than ten million dollars ($10,000,000) ~~per occurrence or~~ claim and ten million dollars ($10,000,000) annual aggregate each.2) The Professional Liability insurance shall cover claims from ~~ing all acts, claims,~~ errors, omissions, negligence, infringement of intellectual property (including copyright and patent and trade secret infringement ); the Cyber Risk insurance shall cover network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy ~~perils~~, wrongful disclosure and release of private information, unintentional negligent collection, or other negligence in the handling of confidential information, and including coverage for related insurable regulatory fines, defenses, and penalties.3) The cyber risk insurance limit ~~Such coverage~~ shall include data breach response expenses, in an amount not less than ten million dollars ($10,000,000) ~~and payable whether incurred by the State or Contractor~~, including but not limited to consumer notification, ~~whether or not~~ as required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses should a data breach occur in contractor’s performance of services for the State or on behalf of the State hereunder.e. Crime Insurance (Fidelity Bond)~~1)~~ The Contractor shall maintain crime insurance, which shall be written on a ~~“loss sustained form”~~ or “loss discovered form” providing coverage for loss, which an Insured is legally liable to pay a third party ~~fidelity~~, including from computer or telephonic misuse. ~~cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.~~ 2) Any crime insurance policy shall have a limit not less than one million dollars ($1,000,000) per ~~claim~~ Loss and one million dollars ($1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement (a/k/a Computer and Telephonic misuse) with a limit of not less than two hundred and fifty thousand dollars ($250,000). ~~This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.~~ | See Item 12 below for an amendment to Section D.30 of the *Pro Forma* Contract, RFP Attachment 6.6. Please note that Section D.30 is intended to restore the State following a loss and is not intended for the State to profit from it.  |
| 1. Page 107

E.3. 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.**Exemption: E.3.** 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, wherein such a claim is related to any Deliverable (final work product) received by State from Contractor under this Agreement. 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. | The State respectfully declines. |
| 1. Plan Document Page 20

7.10 Venue If any person bound by the Plan or otherwise brings any proceedings against the Plan Administrator or Trustees, such person submits to exclusive venue in the Tennessee Claims Commission.**Exception:** 7.10 Venue If any person bound by the Plan ~~or otherwise~~ brings any proceedings against the Plan Administrator or Trustees, such person submits to exclusive venue in the Tennessee Claims Commission. | The State respectfully declines. By law, any claim, suit or action against the State or its officers or employees must be brought in the Tennessee Claims Commission. *See*, [Tenn. Code Ann. § 9-8-307](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS9-8-307&originatingDoc=I097625e12ef011deb055de4196f001f3&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=f105b0ebd964459e8d0093d582c59638&contextData=(sc.Search)). |
| 1. Regarding the RFP for Recordkeeping, Administration and Investment Options for Tennessee's ORP and 403(b) Plans, we are requesting approval to subcontract with the TPA noted below.  This TPA will provide aggregation services as requested in the RFP for the Legacy providers in the 403b plan . . ..
 | As provided in Sections 4.4.2 and 4.4.3 of the RFP, if a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.). Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract. |

1. **Delete Section A.11.f.(5) of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**
2. All security requests to add, update, and terminate State and Institution users, and grant privileges to State and Institution users must be performed by State security staff directly or performed by the Contractor at the request of State security staff. Notwithstanding the foregoing, the Contractor shall immediately terminate State and Institution users who have unauthorized access. The Contractor shall notify the State of such termination as soon as administratively practical thereafter.
3. **Delete Section A.11.g.(2) of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

(2) Back-Up Procedures and Disaster Recovery Plan. For Internet site(s) and systems used in the performance of services hereunder, the Contractor shall maintain contingency plans for systems back-up in the event of disaster or malfunction. Such plans shall be as described in the Contractor's Proposal and comply with Section E.4 of this Contract. At a minimum, this shall be accomplished by the Contractor backing-up all Participant data nightly and maintaining at least two (2) back-up cycles off-site in a commercial business ~~storage~~ facility. ~~The Contractor shall provide notification of an incident to both the Director of the Deferred Compensation Program and to the State's Information Systems Operations Group within two (2) hours after the beginning of operation of the Contractor's Emergency Operations Command Post.~~The Contractor shall use commercially reasonable efforts to notify the State as soon as reasonably practicable, but no later than five (5) hours, if the Contractor’s disaster recovery procedures/controls have been activated as a result of an incident that impacts the State or the Participants.

1. **Delete Section A.34. of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

A.34. Site Visit. The Contractor shall provide to the State, at the State’s request, an on-site tour of the Contractor’s facilities highlighting customer service, and the Contractor’s ability to handle compliance with the Contractor’s responsibilities under this Contract. In the event the State elects to perform ~~a~~ an on-site tour ~~due diligence review~~ of the services performed hereunder, the Contractor shall provide airfare and accommodations for one visit per year for two representatives of the State to the Contractor’s home office for the purpose of conducting the tour ~~review~~. The tour shall take place at a time mutually agreed to by the Parties.

1. **Delete Section A.36. of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

A.36. Participant Investment Advisory/Guidance Services. The Contractor shall provide all Participants who wish to receive specific recommendations on how to manage their own Accounts with the personalized investment advice, if any, described in pages [PAGE NUMBERS FROM SUCCESSFUL PROPOSAL WHICH RESPOND TO SECTION C.133 – C.142 of RFP ATTACHMENT 6.2] of the Contractor’s Proposal. The State reserves the right, at its sole discretion, to discontinue this service upon providing the Contractor with at least ninety (90) calendar days’ ~~twenty (20) Business Days’~~ advance notice.

1. **Delete Section A.43. of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

A.43. Representations. The Contractor represents and warrants to the State the following:

 a. To the best of its knowledge, neither ~~Neither~~ the Contractor nor any officer, stockholder, director, or employee of the Contractor, or any Affiliate of the Contractor, is subject to any present or past litigation or administrative proceeding of or before any court or administrative body which would have a material adverse effect on the Contractor, or its ability to discharge its responsibilities under this Contract, or which would impair their ability to act as a fiduciary under a qualified plan, nor, to its knowledge, is any such litigation or proceeding presently threatened against any of them or their property.

 b. The Contractor and its Affiliates, to the best of its knowledge, are presently in compliance with all existing laws and regulations, a violation of which would or could materially adversely affect the Contractor’s operations or would or could materially adversely affect its ability to fulfill its obligations and undertakings set forth in this Contract.

 c. To the best of its knowledge, the ~~The~~ Contractor is in good standing with the State of Tennessee and all its departments and agencies.

 d. The Contractor has and shall maintain the capability to adequately carry out the recordkeeping and reporting requirements of the ORP and Plans including access to the necessary computer and data retention equipment needed to provide such recordkeeping and reporting.

 The Contractor shall promptly notify the State should any of the foregoing representations and warranties no longer be true and correct.

1. **Delete Section A.48. of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

A.48. Cyber Incidents or Breaches. The Contractor shall ~~immediately~~ provide to the State all information and reports relative to cyber incidents or breaches that could negatively impact Participants or other State data, or that could negatively impact the services provided under this Contract. This includes information and reports in the possession of any subcontractor or cyber security firm acting on behalf of the Contractor for the purpose of detecting corruption, fraud, compliance, operational efficiencies, disaster recovery plan, business continuity plan or cyber response plans. The information and reports shall be provided to the State in the most expedient time possible and without unreasonable delay after the instance has come to the attention of the Contractor, provided that such report and information must be made within three (3) Business Days after the instance has come to the attention of the Contractor.

1. **Delete Section D.5. of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

D.5. Termination for Cause. If a Party (“Breaching Party”) fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract (“Breach Condition”), the other Party (“Non-breaching Party”) may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

1. **Delete Section D.6. of the *Pro Forma* Contract (RFP Attachment 6.6) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

D.6. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor’s obligations under this Contract.

The Parties agree that all references in this Contract to subcontracts and subcontractors shall be deemed to mean subcontractors engaged by the Contractor specifically for the provision of services to the State hereunder such as by way of example the investment consulting services described A.15 and the self-directed brokerage account window services detailed in Section A.37, and not affiliates and third party suppliers used generally by the Contractor in its recordkeeping business to perform certain components of the services ("third-party suppliers"). Notwithstanding the use of any third-party suppliers, the Contractor shall be responsibility for compliance with all terms and conditions of this Contract. The Contractor shall provide reasonable information about third-party suppliers to the State upon request and discuss in good faith any concerns the State may have about any third-party supplier.

1. **Delete Section D.17 of the *Pro Forma* Contract, RFP Attachment 6.6 in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

D.17. 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 third party 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 negligent or willful acts~~,~~ or 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.

1. **Delete Section D.30 of the *Pro Forma* Contract, RFP Attachment 6.6 in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

D.30. 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 General Liability coverage and Automobile Liability coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to ~~name~~ include 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 or policy wording 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 shall endeavor to provide it again ~~thirty (30) calendar days~~ on ~~before~~ the date of renewal or replacement of coverage, but no later than seven (7) business days after the 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~~ The Contractor shall permit the State to review complete, certified 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.**

1. 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.

1. Workers’ Compensation and Employer Liability Insurance
	1. For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
		1. 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:
		1. The Contractor employs fewer than five (5) employees;
		2. The Contractor is a sole proprietor;
		3. The Contractor is in the construction business or trades with no employees;
		4. The Contractor is in the coal mining industry with no employees;
		5. The Contractor is a state or local government; or
		6. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.
2. Automobile Liability Insurance
3. 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.

1. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance
	1. The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor’s profession in an amount not less than ten million dollars ($10,000,000) per occurrence or claim and ten million dollars ($10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
	2. Such coverage shall include data breach response expenses, in an amount not less than ten million dollars ($10,000,000) ~~and payable whether incurred by the State or Contractor~~, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.
2. Crime Insurance
3. The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion. The policy must ~~allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and~~ not contain a condition requiring an arrest or conviction.

2) Any crime insurance policy shall have a limit not less than one million dollars ($1,000,000) per claim and one million dollars ($1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars ($250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.

1. **Add the following as Section D.18 to the *Pro Forma* Contract, RFP Attachment 6.6, and renumber any subsequent sections as necessary:**

D.18. Limitation of Contractor’s Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under this Contract by the State shall be limited to an amount equal to two (2) times the total fees payable under this Contract, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor’s indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

**14. Delete Section E.4.a.(6) of the *Pro Forma* Contract, RFP Attachment 6.6 in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

1. 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~~ as soon as reasonably practicable after destruction. The Contractor may retain copies of such records to the extent necessary for the Contractor to comply with any applicable law or retention policy or that is commercially impractical to return or destroy (such as data on archival tapes). The retained records and data shall continue to be subject to obligations of confidentiality and security and shall be destroyed in the normal course of the Contractor’s business pursuant to its records retention policy.

**15. Delete Section E.6 of the *Pro Forma* Contract, RFP Attachment 6.6 in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

E.6. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State (“PII”). For the purposes of this Contract, “PII” includes “Nonpublic Personal Information” as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time (“GLBA”) and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information (“Privacy Laws”). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall ~~immediately~~ notify the State in the most expedient time possible and without unreasonable delay, but not more than three (3) Business Days: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State’s direction at any time in its sole discretion, whichever is earlier, Contractor shall ~~immediately~~ promptly return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII. The Contractor may retain copies of such records to the extent necessary for the Contractor to comply with any applicable law or retention policy or that is commercially impractical to return or destroy (such as data on archival tapes). The retained records and data shall continue to be subject to obligations of confidentiality and security and shall be destroyed in the normal course of the Contractor’s business pursuant to its records retention policy.

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

**16. Delete Section E.3 of the *Pro Forma* Contract, RFP Attachment 6.6 in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

E.3. 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 third party 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.

**17. Delete Section A.24.k. of the *Pro Forma* Contract, RFP Attachment 6.6 in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

1. For the ORP and each Plan separately, monthly, quarterly and 12-month period ending ~~fiscal year to date~~ financial statements, by Investment, detailing beginning balance; receipts (specifying new deferrals, incoming rollovers, transfers, ~~and~~ investment earnings, and any other receipts); and disbursements (specifying benefit withdrawals, death benefit withdrawals, transfers, annuity purchase transfers, investment losses, ~~and~~ administrative fees, and any other disbursements); and the ORP or Plan’s rate of return for the period.

**18. Delete Section C.3.b(4) of the *Pro Forma* Contract, RFP Attachment 6.6 in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

|  |  |
| --- | --- |
| (4) All Other Services as Detailed in the Contract The fee for all other services detailed in the Contract shall be an asset based fee expressed as a percent to be applied to the total amount of assets under administration for the ORP and 403(b) Plans combined, except for assets in closed, individual annuity contracts that are considered to be legacy assets. The fee shall be charged to each Participant as a regular, direct deduction from the Participant’s account balance.**Note:** After the first year of the Contract, the total annual compensation received by the Contractor for All Other Services detailed in the Contract for any subsequent year of the Contract cannot exceed more than 105% of the total compensation received by the Contractor for those services during the previous year of the Contract. Any excess fees collected shall be returned pro rata to the Participants.Fees for the first year of the Contract shall be based on assets under administration as of the Contract start date. Fees for subsequent years shall be based on the average ~~monthly~~ quarterly assets under administration for the previous year. | [TO BE COMPELETED BASED ON THE SUCCESSFUL RESPONDENT’S COST PROPOSAL FOR THESE SERVICES] |

**19. Delete RFP Attachment 6.3 (Cost Proposal & Scoring Guide) in its entirety and replace it with the RFP Attachment 6.3 (Cost Proposal & Scoring Guide) that is attached to this amendment.** Any sentence or paragraph containing revised or new text is highlighted)**:**

**20. RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.

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| **COST PROPOSAL & SCORING GUIDE***NOTICE: THIS COST PROPOSAL MUST BE COMPLETED* ***EXACTLY*** *AS REQUIRED***COST PROPOSAL SCHEDULE—** The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.The Cost Proposal shall cover **ALL** plan level and participant expenses needed to accomplish the contract scope of services for the ORP and 403(b) Plans collectively. Costs shall be equal for ORP and 403(b) Plan participants. Services covered in the Cost Proposal shall include, but are not limited to: * + Plan Set-Up/Transition
	+ General plan administration and maintenance of records
	+ Voice Response System (setup/ongoing)
	+ Customer Service Center (setup/ongoing)
	+ Internet / Web Services / Microsite (setup/ongoing)
	+ Custodial Trustee Services
	+ General Compliance and Plan Document Services
	+ Customized enrollment / communication materials
	+ Participant Statements / Confirmations
	+ Form 1099R
	+ Check / Wire Processing
	+ Implementation of an holistic financial education program, including field service representative services
	+ Distribution / Withdrawal processing, setup, and maintenance
	+ Managed Account Services
	+ Qualified Domestic Relations Order Services
	+ Self-Directed Brokerage Account Window Services
 |
| **NOTICE:** | Failure to provide a complete Cost Proposal exactly as required below will result in disqualification. A Respondent must NOT propose a zero cost in any of the cost items below and each Respondent must provide in each cost item a minimum proposed amount for each of the compensable units. Further, a Respondent must NOT record any other rates, amounts, or information. The Evaluation Factor associated with each cost item is for evaluation purposes only and indicates the relative emphasis of the item in the overall cost evaluation.The Solicitation Coordinator will multiply the Proposed Cost Item by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the Item’s Raw Weighted Score for purposes of calculating the section score as indicated.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. An electronic or facsimile signature, as applicable, is acceptable. |
| **RESPONDENT SIGNATURE:** |  |
| **PRINTED NAME & TITLE:** |  |
| **DATE:** |  |
|  **RESPONDENT LEGAL ENTITY NAME:**  |  |

|  |  |  |
| --- | --- | --- |
| **Cost Item Description** | **Proposed Cost** | **State Use Only** |
| **Evaluation Factor** | **Raw Weighted Score**  |
| **Managed Account Services as Described in Section A.35. of the Pro Forma Contract (RFP Attachment 6.6).** | *Please provide your complete fee structure for Managed Account Services, including how and with what frequency Participant fees are calculated and charged, which will be included in any contract awarded pursuant to this RFP:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***THEN******based upon and in accordance with your fee structure as shown above****, complete the following hypotheticals* ***for cost evaluation purposes:***  |  |  |
| Participant with exactly $100,000 in total Managed Account Assets for the year. | $\_\_\_\_\_\_\_ per year per Participant using the service | **15** |  |
| Participant with exactly $250,000 in total Managed Account Assets for the year. | $\_\_\_\_\_\_\_ per year per Participant using the service | **3** |  |
| Participant with exactly $400,000 in total Managed Account Assets for the year. | $\_\_\_\_\_\_\_ per year per Participant using the service | **1** |  |
| Participant with exactly $500,000 in total Managed Account Assets for the year. | $\_\_\_\_\_\_\_ per year per Participant using the service | **1** |  |
| The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations. |
|  | **lowest raw weighted score amount from all proposals** | **x 2.5(maximum subsection score)** | **= SUBSCORE A:** |  |
| **raw weighted score amount being evaluated** |

|  |  |
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| **RESPONDENT LEGAL ENTITY NAME:** |  |
| **Cost Item Description** | **Proposed Cost** | **State Use Only** |
| **Evaluation Factor** | **Raw Weighted Score** |
| **Other Participant-Specific Services as Described in Sections A.22.b. and A.37 of the *Pro Forma* Contract (RFP Attachment 6.6)** |  |
| Qualified Domestic Relations Order Services as Detailed in Section A.22.b. of the *Pro Forma* Contract (RFP Attachment 6.6). | $\_\_\_\_\_ per order | **1** |  |
| Self-Directed Brokerage Account Window Services as Detailed in Section A.37 of the *Pro Forma* Contract (RFP Attachment 6.6). |  $\_\_\_\_\_ per year per Participant using the service (non-recurring fees, such as setup fees, should be divided by 5 and added to per year cost) | **2** |  |
| The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations. |
| **Lowest raw weighted score amount from all proposals****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****raw weighted score amount being evaluated** | **x 0.5(maximum subsection score)** | **= SUBSCORE B:** |  |

|  |  |
| --- | --- |
| **RESPONDENT LEGAL ENTITY NAME:** |  |
| **Cost Item Description** | **Proposed Cost** | **State Use Only** |
| **Evaluation Factor** | **Raw Weighted Score** |
| **All Other Services as Detailed in the *Pro Forma* Contract (RFP Attachment 6.6)** | *The fee structure for* ***All Other Services Detailed in the Pro Forma Contract*** *must be an asset based fee expressed as a percent to be applied to the total amount of assets under administration for the ORP and 403(b) Plans combined, except for assets in closed, individual annuity contracts that are considered to be legacy assets. The fee shall be charged to each Participant as a regular, direct deduction from the Participant’s account balance.* ***Note:*** *After the first year of the Contract, the total annual compensation received by the successful Respondent for* ***All Other Services Detailed in the Pro Forma Contract*** *for any subsequent year of the Contract cannot exceed more than 105% of the total compensation received by the Respondent for those services during the previous year of the Contract. Any excess fees collected must be returned pro rata to the Participants.****Based upon and in accordance with the above****, please provide your proposed asset-based fee structure along with any fee schedule reductions due to increased assets under administration, which will be included in any contract awarded pursuant to this RFP. Fees for the first year of the Contract will be based on assets under administration as of the Contract start date. Fees for subsequent years will be based on the average ~~monthly~~ quarterly assets under administration for the previous year.***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*****THEN******based upon and in accordance with your fee structure as shown above****, complete the following hypotheticals* ***for cost evaluation purposes:*** |  |
| $250 million in assets  | \_\_\_\_\_\_\_ % of assets per year | **1** |  |
| $500 million in assets  |  \_\_\_\_\_\_\_ % of assets per year | **1** |  |
| $750 million in assets | \_\_\_\_\_\_\_ % of assets per year | **1** |  |
| $1 billion in assets  | \_\_\_\_\_\_\_ % of assets per year | **1** |  |
| $1.25 billion in assets  | \_\_\_\_\_\_\_ % of assets per year | **1** |  |
| $1.5 billion in assets  | \_\_\_\_\_\_\_ % of assets per year | **1** |  |
| The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations. |
|  | **lowest raw weighted score amount from all proposals** | **x 27(maximum subsection score)** | **= SUBSCORE C:** |  |
| **raw weighted score amount being evaluated** |

| **RESPONDENT LEGAL ENTITY NAME:** |  |
| --- | --- |
| ***Sum of SUBSCORES A, B and C = TOTAL SCORE:*** |  |
| *State Use – Solicitation Coordinator Signature, Printed Name & Date:* |