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| seal-jpg | **STATE OF TENNESSEETREASURY DEPARTMENT****SOLICITATION # 30901–53023FOR RECRUITING SERVICES** |

1. **INTRODUCTION**

The State of Tennessee, Treasury Department, hereinafter referred to as “the State,” has issued this solicitation with the intent of awarding a contract to multiple qualified, independent, recruitment agencies or recruitment specialists to provide the Department’s Human Resources Division with consulting services to recruit both general employees and executive level professionals, in a variety of positions. As of the date of this procurement, the State has approximately two hundred sixty (260) employees who provide services to the State in areas such as: the Tennessee Consolidated Retirement System (administration and investments); College Savings; Unclaimed Property; Cash Management; and Risk Management. These areas involve sophisticated accounting and information technology solutions that require highly qualified staff. The State anticipates that the Contractors selected through this solicitation will work together with the State, on an as-needed basis, to assess the State’s business needs and develop a strategy and methodology for successful recruitment. It is anticipated that the State could seek to hire up to five (5) employees per year utilizing this service; this, however, is not a guarantee of the number of employees sought by the State pursuant to the contracts awarded pursuant to this solicitation.

2. **SCOPE OF SERVICE, CONTRACT PERIOD, & REQUIRED TERMS AND CONDITIONS**

The *Pro Forma Contract* attached to this solicitation (Attachment C) substantially represents the contract document that the contractor selected by the State must sign. It details the State’s required:

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

3. **PROCUREMENT SCHEDULE**

The following schedule represents the State’s best estimates for this procurement, however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or to cancel or cancel and reissue a similar solicitation.

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| **EVENT** | **TIME (central time zone)** | **DATE**(all dates are state business days) |
| 1. Solicitation Issued |   | July 12, 2022 |
| 2. Notice of Intent to Respond Deadline  | 2:00 p.m. | July 18, 2022 |
| 3. Written “Questions & Comments” Deadline | 2:00 p.m. | July 25, 2022 |
| 4. State Response to Written “Questions & Comments” |  | August 5, 2022 |
| 5. Offer Deadline  | 2:00 p.m. | August 15, 2022 |
| 6. State Completes Qualifications Evidence Review & Identifies Responsive & Responsible Offers |  | August 26, 2022 |
| 7. State Releases Award Notifications |  | August 31, 2022 |
| 8. Contract Signing  |  | September 7, 2022 |

4. **RESPONSE REQUIREMENTS**

4.1. An offer in response to this solicitation must respond only as required by this solicitation document and must consist of one part: *Qualifications Evidence* (including any supporting documentation).

The State may determine an offer to be non-responsive and ineligible for contract award if it fails to address all items, organize and properly reference the *Qualifications Evidence*.

4.1.1. *Qualifications Evidence* – The *Qualifications Evidence Guide* (Attachment A) details specific mandatory requirements for an offer in response to this solicitation. An Offeror must duplicate and use Attachment A, completed with proposal page numbers, to cover (as a table of contents), organize, reference, and complete the *Qualifications Evidence* portion of the solicitation response.

4.2. **Offer Prohibitions.**  An offer in response to this solicitation MUST NOT:

* include the Offeror’s own contract terms and conditions, including compensation terms;
* restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this solicitation;
* include, for consideration in this procurement process, incorrect information that the Offeror knew or should have known was materially incorrect.

4.3. **Offer Delivery.** No later than the Offer Deadline (refer to section 3, above), a potential contractor must deliver to the State ALL documentation required in the *Qualifications Evidence Guide (Attachment A)*. It must be delivered via email to:

Dawn Rochelle, Solicitation Coordinator

Email: Dawn.Rochelle@tn.gov

5. **OFFER REVIEW & CONTRACT AWARD**

An evaluation team of at least three State employees will review the *Qualifications Evidence* and any supporting documentation submitted with each offer. For an offer to be acceptable and eligible for contract award, all evaluators must determine that the *Qualifications Evidence* documents that the Offeror meets minimum requirements specified by this solicitation and is, at least, minimally acceptable as a contractor for the subject services.

The State will award a contract to each Offeror that is deemed eligible for a contract award.

6. **GENERAL INFORMATION & REQUIREMENTS**

6.1. **Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this solicitation or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this solicitation shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

6.2. **Communications.** Reference Solicitation # 30901–53023, in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator.

Dawn Rochelle, Solicitation Coordinator
Tennessee Treasury Department
Phone: (615) 253-8770

Email: Dawn.Rochelle@tn.gov

**Unauthorized contact about this solicitation with other employees or officials of the State of Tennessee except as provided below may result in disqualification from consideration under this solicitation.**

Notwithstanding the foregoing, potential responders may also contact the following as appropriate:

* staff of the Governor’s Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities, and small businesses as well as general, public information relating to this solicitation (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and
* the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Jamie Formont, Director of Human Resources
Tennessee Treasury Department
13th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243
Phone: (615) 734.2245

Email: jamie.formont@tn.gov

6.3. **Conflict of Interest.** The State shall not consider an offer from, and this solicitation shall not result in a contract with:

* an individual who is, or within the past six months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this solicitation;
* a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a “blind trust” arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
* a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
* any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this solicitation or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage).

For these purposes, the State will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.

6.4. **Disclosure of Proposal Contents.** All materials submitted to the State in response to this solicitation become the property of the State of Tennessee. Selection for award does not affect this right. Upon completion of evaluations, indicated by the award notification (refer to section 3, above), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting an offer, a potential contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.

**QUALIFICATIONS EVIDENCE GUIDE**

The offer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The offer must also detail the *Qualifications Evidence* page number for each item in the appropriate space below, and use this guide to cover the Qualifications Evidence (as its table of contents).

In addition to the items below, the State will review each offer for compliance with all solicitation requirements, including but not limited to:

* The offer must be delivered to the State no later than the Offer Deadline.
* The *Qualifications Evidence* must be submitted as required.
* The offer must NOT contain any qualification, limitation, or other restrictions.

| **OFFEROR LEGAL ENTITY NAME:** |  |
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| **Page #**(Offeror completes) | **Item Ref.** | **QUALIFICATIONS EVIDENCE** |
|  | **A.1.** | Detail the name, e-mail address, mailing address, and telephone number of the person the State should contact regarding the offer. |
|  | **A.2.** | Provide the *Statement of Certifications and Assurances* (Solicitation Attachment B) completed and signed by an individual empowered to bind the Offeror to the provisions of this solicitation and any resulting contract. The document must be signed without exception or qualification. |
|  | **A.3.** | Provide a statement, based upon reasonable inquiry, of whether the Offeror or any individual who shall perform work under the contract has a possible conflict of interest (*e.g.*, employment by the State of Tennessee) and, if so, the nature of that conflict.NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award. |
|  | **A.4.** | Provide a statement of whether the Offeror or, to the Offeror’s knowledge, any of the Offeror’s employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this solicitation, have been convicted of, pled guilty to, or pled *nolo contendere* to any felony. If so, include an explanation providing relevant details.*Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any offer or cancel any award.* |
|  | **A.5.** | Provide a statement of whether there is any material, pending litigation that the Offeror should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this solicitation or is likely to have a material adverse effect on the Offeror’s financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Offeror’s performance in a contract pursuant to this solicitation.*Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any offer or cancel any award.* |
|  | **A.6.** | Provide a current bank reference indicating that the Offeror’s business relationship with its financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months. |
|  | **A.7.** | The Offeror must have an office in the State of Tennessee. Please provide a statement confirming that the Offeror has an office within the State of Tennessee. Please also provide the name, email address, mailing address, and telephone number of the person the State should contact regarding the offer. |
|  | **A.8.** | Provide the city and state of Respondent’s headquarters and the cities and states where Respondent maintains an office. |
|  | **A.9.** | Provide a statement, including supporting information, which confirms that the Offeror currently possesses the requisite resources and industry experience and expertise in providing the services as requested in this solicitation. |
|  | **A.10.** | The Offeror must have in-depth expertise in placing candidates in one or more of the following disciplines or position types: * Accountants, with or without CPA certifications;
* Audit professionals with ACL, CIA, CFE, or CPA certifications;
* Compliance professionals with CSCP, CCEP, and CRCM certifications;
* Other professionals with a CFP or RPA certification;
* Legal professionals with retirement, securities, or finance experience;
* Human resources, communications, or banking experience; or
* Information Systems professionals.
* Retirement professionals, including deferred benefit or deferred compensation plans

Provide a statement confirming that your firm has in-depth expertise in placing candidates in one or more of the above disciplines or position types and identify those disciplines or position types. Provide detail as to your experience placing candidates in the above-referenced fields. |
|  | **A.11.** | Provide a statement detailing the process the Offeror utilizes to locate job applicants, including how it organizes its search, locates potential job applicants, and utilizes professional organizations or associations, or organizations or associations that enhance inclusion of female or ethnic minorities and the locations or regions in which it conducts its searches.  |
|  | **A.12.** | Provide a statement confirming that the Offeror could recruit from organizations or associations specifically requested by the state. |
|  | **A.13.** | Provide a list of the Offeror’s top five (5) clients and for each include how long the Offeror has served the client, the types of positions and job areas for which your firm recruited job applicants for the client, and the salary range for the positions you placed. In lieu of identifying the clients by name, the Offeror may, instead, describe the clients. |
|  | **A.14.** | Provide a statement describing your firm’s success rate for filling positions for your clients. If possible, given the data available to the Offeror, success should be defined as the hiring of an individual for a position with the client due to the efforts of the Offeror, but excluding any employee who voluntarily leaves employment or who is terminated by the client (absent a reduction in workforce) within ninety (90) days of placement.  |
|  | **A.15.** | Please provide any additional information that might benefit the State. |

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| **STATEMENT OF CERTIFICATIONS AND ASSURANCES**An individual legally empowered to contractually bind the Offeror must complete and sign the *Statement of Certifications and Assurances* below as required, and this signed statement must be included with the offer as required by the Solicitation Attachment A.  |
| **The Offeror does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**1. The Offeror will comply with all of the provisions and requirements of the solicitation.
2. The Offeror will provide all services defined in the Scope of Services specified by the *Pro Forma* *Contract* attached to this solicitation as Attachment C for the total Contract Term.
3. The Offeror accepts and agrees, without qualification, to all terms and conditions set out by the *Pro Forma* *Contract* attached to the solicitation.
4. The Offeror acknowledges and agrees that a contract resulting from the solicitation shall incorporate, by reference, the offer in response to the solicitation as a part of the contract.
5. The Offeror will comply, as applicable, with:
6. the laws of the State of Tennessee;
7. Title VI of the federal Civil Rights Act of 1964;
8. Title IX of the federal Education Amendments Act of 1972;
9. the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
10. the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
11. To the knowledge of the undersigned, the information detailed within the offer in response to the solicitation is accurate.
12. The offer submitted in response to the solicitation was independently prepared, without collusion, under penalty of perjury.
13. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Offeror in connection with the solicitation or any resulting contract.
14. The Offeror affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106.” For reference purposes, the list is currently available online at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

**By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this Solicitation and any contract awarded pursuant to it. If the signatory is not the Offeror (if an individual) or the Offeror’s company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual’s authority to bind the Offeror.****DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE OFFEROR****SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****PRINTED NAME & TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****OFFEROR LEGAL ENTITY****NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

***PRO FORMA* CONTRACT**

**See attached**

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Treasury (“State”) and Contractor Legal Entity Name (“Contractor”), is for the provision of recruiting services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a “Party” or collectively as the “Parties” to this Contract.

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

Contractor Place of Incorporation or Organization: Location

Contractor Edison Registration ID # Number

**A. SCOPE:**

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Recruiting Services. In consultation with the State and upon the request of the State, the Contractor shall provide the State with services to recruit full-time employees for the State. Such employees may be general employees or executive or management level employees. The recruiting services shall include:

 a. Meeting with the State’s representatives in advance of any employment recruitment to understand the State’s employment needs, the business requirements of the positions sought to be filled and to develop a strategic recruitment plan for the State for the selection, hiring and retention of the State’s employees for the positions identified by the State;

 b. Upon the request of the State, assisting the State in developing employment job postings, advertisements and announcements, that include, but are not limited to, a description of the services provided by the State and the position duties and requirements of the available positions;

 c. Posting the positions and advertisements electronically and utilizing social media, in addition to any other means preferred by Contractor and acceptable to the State;

 d. Identifying qualified candidates through the professional and proprietary networks, connections and other sources, including (if requested by the State) professional organizations or associations that enhance inclusion of female or ethnic minority candidates.;

 e. Identifying qualified candidates that have the required knowledge, skill and experience to meet the State’s needs.

 f. Accepting applications and resumes for the State’s vacant positions;

 g. Providing the applications and resumes to the State, either before or after the screening process, at the discretion of the State;

 h. Screening candidates by conducting an initial phone call or email communication with the candidate, confirming that the candidate meets the qualifications for experience and education, and presenting a summary of the candidate’s qualifications and the results of screening to the State;.

 i. Assisting the State, when requested, by providing information to the State that identifies market salaries in the Nashville region for the position.

A.3. Reporting. During any period when the Contractor has been requested to perform services under Section A.2. hereof, when requested by the State, the Contractor shall provide the State with a weekly report of its recruiting efforts and results. Within this weekly report, the Contractor shall provide the State with a summary of its recruitment activities that it conducted the week prior to the date of the report and the activities that it anticipates conducting in the week ahead. The weekly reports shall include, but not be limited to, the State’s positions for which the Contractor is providing recruiting services; the methods used to advertise for the State’s available positions; the applications or resumes submitted in response to an employment advertisement; the number of inquiries received relative to an employment advertisement and the source of the inquiries; and the nature of the follow-up communications and research provided by the Contractor in response to the employment inquiries.

A.4. Account Management Personnel. The Contractor shall assign a staff person to act as the primary contact with the State relative to this Contract. The State reserves the right to require that the Contractor designate another staff member if the State is not satisfied with the performance of the assigned personnel.

A.5. Contingent Payment. The Contractor shall only be paid pursuant to Section C.3. in this Contract upon the Contractor’s successful placement of a candidate with the State, meaning the hiring of an individual for a position with the State. If a candidate who is hired by the State (employee) voluntarily leaves the employment of the State within ninety (90) days after the employee’s hire date or the employee is terminated by the State (for a reason other than a reduction in workforce), then the Contractor will provide the State with a replacement candidate at no additional charge to the State or refund the entire placement fee to the State for that employee. If the candidate leaves the employment of the State within ninety (90) days after the employee’s hire date because of a reduction in the State’s workforce, then the Contractor will not be required to provide the State with a replacement candidate or refund the placement fee paid by the State to the Contractor.

A.6. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

 Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

 Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor’s industry.

 If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State’s rights under this Section shall not prejudice the State’s rights to seek any other remedies available under this Contract or applicable law.

A.7. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

A.8. Patent, Copyright or Trademark Work Product. To the extent that the Contractor utilizes a work product to fulfill the Scope of Services contained in this Contract that has patent, copyright or trademark protections obtained by the Contractor, all right, title and interest in that work product, including, but not limited to, copyrights, patents, trade secrets and other intellectual property of the Contractor, shall remain with the Contractor.

**B. TERM OF CONTRACT:**

 This Contract shall be effective on September 7, 2022 (“Effective Date”) and extend for a period of sixty (60) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Written Dollar Amount ($Number) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

1. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
2. The Contractor shall be compensated based upon the following payment methodology:

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| --- | --- |
| **Goods or Services Description** | **Amount** (per compensable increment) |
| Providing the services contained in Section A of the Contract, Scope of Services  | \_22.5\_\_\_\_\_ % of the hired individual’s first year base salary at the time of hire (not including benefits, bonuses or incentives)  |

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

State of Tennessee, Department of Treasury

 Division of Administrative Services

 Budget Officer

 14th Floor, Andrew Jackson State Office Building

 502 Deaderick Street

 Nashville, TN, 37243

1. Each invoice, on Contractor’s letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Customer account name: Department of Treasury; Division of Human Resources;
5. Customer account number (assigned by the Contractor to the above-referenced Customer);
6. Contractor name;
7. Contractor Tennessee Edison registration ID number;
8. Contractor contact for invoice questions (name, phone, or email);
9. Contractor remittance address;
10. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
11. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
12. Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
13. Amount due for each compensable unit of good or service; and
14. Total amount due for the invoice period.
15. Contractor’s invoices shall:
16. Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
17. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
18. Not include Contractor’s taxes, which includes without limitation Contractor’s sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
19. Include shipping or delivery charges only as authorized in this Contract.

 c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor’s Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

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

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

The State:

Jamie Formont

 State of Tennessee
Department of Treasury
502 Deaderick Street
Nashville, Tennessee 37243
615-734-2245

 Treasury.Humanresources@tn.gov

The Contractor:

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

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State’s exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State’s exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. 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.

D.7. 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.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor’s compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor’s records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.12. Monitoring. The Contractor’s activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act (“PPACA”) with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor’s failure to fulfill its PPACA responsibilities for itself or its employees.

D.17. Limitation of State’s 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’s total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

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 shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, 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.

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys’ fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

D.20.    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.

D.21. 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.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor’s performance of this Contract.

D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.

D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties’ agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor’s duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

1. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
2. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments A and B];
3. any clarifications of or addenda to the Contractor’s proposal seeking this Contract;
4. the State solicitation, as may be amended, requesting responses in competition for this Contract;
5. any technical specifications provided to proposers during the procurement process to award this Contract; and
6. the Contractor’s response seeking this Contract.

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq*., addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor’s failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance (“TDCI”); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers’ compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention (“SIR”) over fifty thousand dollars ($50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor’s sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

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

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).
4. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor’s subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor’s subcontractors and that are subject to tax.

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as “Confidential Information.” Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

 The obligations set forth in this Section shall survive the termination of this Contract.

D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of this Contract, engage in a Boycott of Israel, as that term is defined in Public Chapter No. 775.

**E. SPECIAL TERMS AND CONDITIONS:**

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

E.2.      Contractor Commitment to Diversity.  The Contractor shall assist the State in monitoring the Contractor’s performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities.  Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

E.3. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.4. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,'' in accordance with its instructions.

c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.5. 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 State: (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 and/or procure 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 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 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.

E.6. Applicable Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the Treasury Department or to any member of a Board, Commission or Committee administratively attached to the Treasury Department that would violate the Treasury Department’s Gifts and Solicitations Policy, attached hereto as **Attachment B**.

E.7. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and contest are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

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| **IN WITNESS WHEREOF,** |
| **CONTRACTOR LEGAL ENTITY NAME:** |
|  |
| **CONTRACTOR SIGNATURE** | **DATE** |
|  |
| **PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**  |
| **STATE OF TENNESSEE, DEPARTMENT OF TREASURY:** |
|  |
| **DAVID H. LILLARD, JR., STATE TREASURER** | **DATE** |

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| --- |
| **CONTRACT ATTACHMENT A** |
| **ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**  |
| **SUBJECT CONTRACT NUMBER:** |  |
| **CONTRACTOR LEGAL ENTITY NAME:** |  |
| **EDISON VENDOR IDENTIFICATION NUMBER:** |  |
| **The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.** |
|  |
| **CONTRACTOR SIGNATURE** |
| NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual’s authority to contractually bind the Contractor, unless the signatory is the Contractor’s chief executive or president. |
|  |
| **PRINTED NAME AND TITLE OF SIGNATORY**  |
|  |
| **DATE OF ATTESTATION**  |

**ATTACHMENT B**

**TREASURY DEPARTMENT GIFTS AND SOLICITATION POLICY**

No employee or any member of a Board, Commission or Committee administratively attached to the Department shall solicit, accept or agree to accept, directly or indirectly, on behalf themselves or their immediate family, any gift in violation of state law including, but not limited to, any gratuity, service, favor, entertainment, lodging, transportation, loan, loan guarantee rebate, money, any promise, obligation or contract for future awards or compensation or any other thing of monetary value, from any **individual** or **entity** that:

* Has, or is seeking to obtain, contractual or other business or financial relations with the Treasury Department or the Tennessee Consolidated Retirement System;
* Conducts operations or activities that are regulated by the Treasury Department;
* May bid on future procurement from the Department or a Board, Commission, or Committee administratively attached to the Department based on the employee’s reasonable belief that the person or entity intends to submit a bid; or
* Has an interest that may be substantially affected by the performance or nonperformance of the employee’s official duties.

Generally, gifts from a lobbyist or an employer of a lobbyist are prohibited; however, the following are exceptions to the general gift prohibition:

* A gift given for nonbusiness purpose and motivated by a close personal friendship and not by the position of the employee, and specifically authorized and defined by the Ethics Commission;
* Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
* Sample merchandise, promotional items, and appreciation tokens if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business;
* Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items, provided that any such item shall not be in a form which can readily be converted to cash;
* Benefits resulting from business, employment, or other outside activities of the employee or the employee’s immediate family, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the employee;
* Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to, discounts afforded to the general public or prizes and awards given out in public contests;
* Expenses of out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials;
* Food, refreshments, amenities, goody bags, entertainment, or beverages provided as part of a meal, reception or similar event including tradeshows and professional meetings; and
* Food, refreshments, meals, foodstuffs, entertainment, beverages that are provided in connection with the following: an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which regularly meets at in-state events in which invitations are extended to legislative or executive branch employees. The value of the items shall not exceed fifty dollars ($50.00) per person, per day.\*

\* The amount may be increased to reflect the percentage of change in the average consumer price index. The Ethics Commission publishes the increased amount on its website.

For other gifts offered which are not included in the exceptions above, the employee must obtain the written approval of the Assistant Treasurer for Legal, Compliance, and Audit.