



INVITATION TO BID (ITB) FOR SWC #136 PEST CONTROL SERVICES TERMS AND CONDITIONS

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Section 1 -- Background Information, Invitation to Bid

Purpose: The purpose of this Invitation to Bid ("ITB") is to establish a Statewide Contract, which will provide a source or sources of supply for e pest control services to include all labor, equipment and materials per specifications outlined below. Pest control is defined as the control and elimination of specific incidents of all nesting and breeding pests and the control treatment of all potential nesting and breeding areas to prevent infestation.

Refer to the "SWC 136 Pest Control Services Specifications" document for more details.

Pre-response Conference Notification. The Central Procurement Office will hold a pre-response conference for this solicitation at the date, time, and location specified below:

Date/Time: September 15, 2017 at 2:30 PM CT

Location: TN Tower, 3rd Floor, 312 Rosa L. Parks Ave., Nashville, TN 37243

Room: Morrow Conference Room

Virtual Attendance: Join via WebEx via <https://goo.gl/wLX74B>

Call-in Option: 1-415-655-0003

Meeting Code: 646 099 654

Meeting Password: roaches

Prospective respondents are encouraged to attend this pre-response conference; however attendance is not mandatory in order to submit a response. The Central Procurement Office conducts pre-response conferences to discuss and answer questions prior to response due date. The pre-response conference is for informational purposes only. Nothing stated at the pre-response conference shall change the solicitation unless the change is reflected in writing and disseminated to all prospective respondents that attended the pre-response conference.

Questions. Respondents may submit written questions about this ITB to the Solicitation Coordinator. All questions must be submitted no later than Tuesday, September 19, 2017 by 2:00 PM CT via email to the Solicitation Coordinator.

Accommodation for People with Disabilities. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.

Award Criteria:

Option to Award by County The State may award a single contract for all line items within a county to the respondent whose response meets the requirements and criteria in this ITB at the lowest cost.

If the State awards contracts by county, total bid price shall be calculated by summing the line items totals in the county. Respondents must bid all line items in a county to be considered for an award for that county unless otherwise specified.

Section 2 -- Standard terms of the solicitation

Respondent Registration. Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:
https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST

Respondent's Ability to Perform. The State shall have the right to require evidence of the Respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.

Quality of Workmanship and Materials. Unit price responses are requested on products or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.

Performance. The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.

Clarifications. The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.

Negotiations. The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and

negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.

Response Cancellation and Rejection. The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except pursuant to target pricing or best and final offer negotiations as specified in this ITB.

Responses Due. The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

Communications and Contacts. Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Jordan Green
Department of General Services -- Central Procurement Office
312 Rosa L Parks Avenue, 3rd Floor, Tennessee Tower, Nashville TN 37243
615-741-9497
Jordan.M.Green@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, Respondents may alternatively contact:

1. Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this RFP (visit www.tn.gov/businessopp/ for contact information); and
2. 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, and associated federal regulations:

Helen Crowley
Department of General Services
312 Rosa L Parks Ave, 3rd Floor, Tennessee Tower, Nashville, TN 37243
615-741-3836
Helen.Crowley@tn.gov

Responses Submitted by Mail. If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address: Department of General Services,

Central Procurement Office Attn: Bidder Services 3rd Floor, William R Snodgrass, Tennessee Tower 312 Rosa L. Parks Avenue Nashville, TN 37243-1102. Failure to comply with these requirements may result in rejection of the response.

Models Included in Response. All goods or services identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.

F.O.B. Destination. Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.

Firm Offer. The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.

Respondent Certification. By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.

Exceptions or New Terms or Conditions. Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.

Conflict of Interest. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:

1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

Tax Exemption. The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful respondent shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this ITB.

Specifications Govern. Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.

Inspection of Procurement File. All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing the respondent(s) recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.

Protest by Respondent. Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: <http://tn.gov/generalservices/topic/vendor-information>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

Section 3 -- Special Terms of the Solicitation

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

On-site Inspection. All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.

Prompt Pay Discount. Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.

Safety of Chemical Products. All respondents awarded a contract must be capable of maintaining, for all of its chemical products available under this Contract, a safety data sheet ") on the national Safety Data search repository or on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge. The respondent that receives a contract award must include the manufacturer's universal resource locator (URL) for its safety data sheet. For purposes of this safety data sheet requirement, the State recognizes the following URL for national safety data search repository: MSDS-SEARCH, which can be accessed on the internet at: <http://www.msdssearch.com>.

Professional Licensure. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractor, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

Department of Revenue Registration. Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Supplier is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this

ITB. For purposes of this registration requirement, the Department of Revenue may be contacted at: <http://www.tn.gov/revenue/topic/revenue-contacts>

Prohibition of Illegal Immigrants. Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.

Section 4 -- Contract Terms and Conditions

1. **Scope.** The Supplier shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.
2. **Term of Contract.** This Contract shall be effective on November 1, 2017 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Supplier prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
3. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option.
4. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.
5. **Invoice Requirements.** The Supplier shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Supplier shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.
 - a) Each invoice, on Supplier'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 Supplier);
 2. Invoice date;
 3. Contract number (assigned by the State);
 4. Purchase order number (assigned by the State);
 5. Customer account name: The State of Tennessee;
 6. Customer account number (assigned by the Supplier to the above-referenced Customer);
 7. Supplier name;
 8. Supplier Tennessee Edison supplier ID number;
 9. Supplier contact for invoice questions (name, phone, or email);
 10. Supplier remittance address;
 11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 13. Applicable payment methodology of each good or service invoiced;
 14. Amount due for each compensable unit of good or service; and
 15. Total amount due for the invoice period.

- b) Supplier's invoices shall:
 - 1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
 - 2. 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;
 - 3. Not include a line item for Supplier's taxes, which includes without limitation Supplier's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - 4. 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 undisputed invoice that meets the minimum requirements of this Section.
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.
7. **Invoice Reductions.** The Supplier'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 this Contract, to not constitute proper compensation for goods delivered or services provided.
8. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Supplier under this or any contract between the Supplier and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Supplier.
9. **Prerequisite Documentation.** The Supplier shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a) The Supplier shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Supplier acknowledges and agrees that, once this form is received by the State, payments to the Supplier, under this or any other contract the Supplier has with the State of Tennessee, may be made by ACH; and
 - a)
 - b) The Supplier 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 Supplier's Federal Employer Identification Number or Social Security Number referenced in the Supplier's Edison registration information.
10. **Substitute Items Offered by the Supplier.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Supplier may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date

Supplier requests to make the substitution. Supplier shall not make any substitutions for awarded items without the State's prior, written approval. Supplier shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.

11. **Purchase Order Release.** Agency submission of a purchase order to Supplier authorizes Supplier to deliver goods or provide services.
12. **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. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Supplier:
Supplier Contact Name & Title
Supplier Name
Address
Email Address
Telephone Number

State of Tennessee:
Department of General Services – Central Procurement Office
312 Rosa L. Parks Avenue, 3rd Floor, Tennessee Tower, Nashville, TN 37243
615-741-1035

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

13. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
14. **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 Supplier. 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 Supplier shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Supplier 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 Supplier shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
15. **Assignment and Subcontracting.** The Supplier 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 subcontractor, the Supplier shall be the prime Supplier 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 subcontractor in fulfilling the Supplier's obligations under this Contract.

16. **Conflicts of Interest.** The Supplier warrants that no part of the Supplier'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 Supplier in connection with any work contemplated or performed under this Contract.

The Supplier acknowledges, understands, and agrees that this Contract shall be null and void if the Supplier is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Supplier 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.

17. **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 Supplier agrees that the Supplier 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 Supplier shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at <http://tn.gov/generalservices/topic/vendor-information>, semi-annually during the Term. If the Supplier is a party to more than one contract with the State, the Supplier may submit one attestation that applies to all contracts with the State. All Supplier attestations shall be maintained by the Supplier 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 Supplier 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 subcontractor shall be maintained by the Supplier and made available to State officials upon request.
- c) The Supplier shall maintain records for all personnel used in the performance of this Contract. Supplier's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d) The Supplier 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.

18. **Records.** The Supplier shall maintain documentation for all charges under this Contract. The books, records, and documents of the Supplier, 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.
19. **Monitoring.** The Supplier'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.
20. **Progress Reports.** The Supplier shall submit brief, periodic, progress reports to the State as requested.
21. **Independent Supplier.** 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.
22. **Statewide Contract Reports.** All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.
 - a) **Quarterly Reports:** Supplier(s) will submit quarterly reports to the Contract Administrator no later than ten (10) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than January 10th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities, quasi-governmental bodies ("Other Governmental Bodies"), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:
 1. Edison contract number
 2. Contract line item number
 3. Invoice date
 4. Invoice number
 5. Supplier part number
 6. Item or bundle description
 7. Quantity purchased
 8. Unit of measure
 9. Unit of measure description
 10. Name of State Agency, Other Governmental Body or not-for-profit entity
 11. Identity of purchaser: State entity or non-State entity
 12. State Agency location
 13. Unit/Contract price per line item
 14. List price as listed in supplier's catalog if catalog item
 15. Subtotals for each category above
 16. Grand totals for each category above

- b) Diversity Business and Subcontractor Usage Reports: The Supplier shall submit monthly reports of returns, credits, savings, net purchases, and percent of net purchases by subcontractor, small business enterprises, and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be submitted 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>.
 - c) Custom Reports: When requested by the State, the Supplier shall submit custom reports to the Contract Administrator within thirty (30) days of the request.
23. **HIPAA Compliance**. The State and Supplier 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.
- b) Supplier 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.
 - c) Supplier 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.
 - d) The State and the Supplier 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 Supplier 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.
 - e) The Supplier will indemnify the State and hold it harmless for any violation by the Supplier or its subcontractor 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.
24. **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 Supplier agrees that if it is later determined that the true nature of the working relationship between the Supplier and the State under this Contract is that of "employee/employer" and not that of an independent Supplier, the Supplier, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Supplier received from TCRS during the Term.
25. **Tennessee Department of Revenue Registration**. The Supplier 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.

26. **Debarment and Suspension.** The Supplier certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractor 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 Supplier 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 subcontractor are excluded or disqualified.

27. **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 Supplier's representatives, suppliers, subcontractor, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Supplier 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 Supplier's performance longer than forty-eight (48) hours, the State may, upon notice to Supplier: (a) cease payment of the fees until Supplier 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. Supplier 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.

28. **State and Federal Compliance.** The Supplier shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

29. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Supplier 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 -- 407.
30. **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.
31. **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.
32. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
33. **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 Supplier's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
f)
 - b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
g)
 - c) any clarifications of or addenda to the Supplier's response seeking this Contract;
h)
 - d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
i)
 - e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
j)
 - f) the Supplier's response seeking this Contract.
34. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Supplier 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.
35. **Patient Protection and Affordable Care Act.** The Supplier 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 Supplier shall indemnify the State and hold it harmless for any costs to the State arising from Supplier's failure to fulfill its PPACA responsibilities for itself or its employees.

36. **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.
37. **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.
38. **Hold Harmless.** The Supplier 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 Supplier, its employees, or any person acting for or on its or their behalf relating to this Contract. The Supplier further agrees it shall be liable for the reasonable cost of attorneys 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 Supplier of its obligations under this Section to the extent that the Supplier can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Supplier, 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.
39. **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.
40. **Termination for Convenience.** The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Supplier 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 Supplier for compensation for any good or service that has not been provided, nor shall the Supplier be relieved of any liability to the State for any damages or claims arising under this Contract.
41. **Termination for Cause.** If the Supplier fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Supplier 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 Supplier 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.
42. **Nondiscrimination.** The Supplier 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 Supplier 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 Supplier shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

43. **Additional Lines, Items or Options.** At its sole discretion, the State may make written requests to the Supplier to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a) After the Supplier receives a written request to add lines, items, or options, the Supplier shall have ten (10) business days to respond with a written proposal. The Supplier's written proposal shall include:
 - k)
 - 1. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - 2. Any pricing related to the new lines, items, or options;
 - 3. The expected effective date for the availability of the new lines, items, or options; and
 - 4. Any additional information requested by the State.
 - l)
 - b) The State may negotiate the terms of the Supplier's proposal by requesting revisions to the proposal.
 - m)
 - c) To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - n)
 - d) Only after a MOU has been executed shall the Supplier perform or deliver the new lines, items, or options.
44. **Estimated Liability.** The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be one million dollars (\$1,000,000.00) ("Estimated Liability"). This Contract does not grant the Supplier 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 Supplier will only be paid for goods or services provided under this Contract after a purchase order is issued to Supplier by the State or as otherwise specified by this Contract.
45. **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 Supplier or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
46. **Limitation of Supplier's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Supplier's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount and as may be amended. Except as set forth below, in no event will the Supplier be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit

the liability of the Supplier for: (i) intellectual property or any Supplier 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.

47. **Warranty Clauses.**

47.1 **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Supplier under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Supplier, and Supplier 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.

47.2 **Warranty.** Supplier 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 general offered by Supplier, 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 Supplier receives notice of a Defect during the Warranty Period, then Supplier shall correct the Defect, at no additional charge. Supplier represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Supplier 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 Supplier's industry.

If Supplier fails to provide the goods or services as warranted, then Supplier will re-provide the goods or services at no additional charge. If Supplier 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 Supplier 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.

48. **Delivery.** Supplier shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.

49. **Price Changes.** Prices identified in the Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source, shall remain firm for three hundred sixty-five (365) days ("Firm Price Period").

a) Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Supplier's costs.

o)

b) Price Increases. After the Firm Price Period, Supplier may request price increases. The request shall: include independently verifiable documentation that supports Supplier's request for a price increase; not constitute an increase in Supplier profit; and reflect a price increase that is applicable to all of Supplier's customers.

p)

- c) Approval of Price Changes. The State may at its sole option: (1) grant the Supplier's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Supplier's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Supplier shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Supplier shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

50. **Insurance Clauses.**

- 50.1 **Insurance.** Supplier shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Supplier loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Supplier shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Supplier to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Supplier's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Supplier desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Supplier must provide a certificate of self-insurance or a letter on the Supplier's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Supplier to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Supplier shall provide the State evidence that all subcontractor maintain the required insurance or that the subcontractor are included under the Supplier's policy.

The Supplier agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Supplier's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Supplier agrees that the insurance requirements specified in this Section do not reduce any liability the Supplier has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Supplier 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 Supplier of its obligations under this Section

to the extent that the Supplier can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Supplier 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.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

50.2 **Workers' Compensation and Employer Liability Insurance.** The Supplier shall maintain:

- a) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- q)
- b) 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.
- c) If the Supplier certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Supplier shall furnish written proof of such exemption for one or more of the following reasons:
 1. The Supplier employs fewer than five (5) employees;
 2. The Supplier is a sole proprietor;
 3. The Supplier is in the construction business or trades with no employees;
 4. The Supplier is in the coal mining industry with no employees;
 5. The Supplier is a state or local government; or
 6. The Supplier self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

50.3 **Commercial General Liability Insurance.** The Supplier shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent Suppliers, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Supplier shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

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

51. **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

Supplier by the State or acquired by the Supplier 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 Supplier to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Supplier 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. Supplier 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.

52. **Prohibited Advertising or Marketing.** The Supplier shall not suggest or imply in advertising or marketing materials that Supplier's goods or services are endorsed by the State. The restrictions on Supplier advertising or marketing materials under this Section shall survive the termination of this Contract.
53. **Travel Compensation.** The Supplier shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
54. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Supplier and the Supplier's subcontractor shall remit sales and use taxes on the sales of goods or services that are made by the Supplier or the Supplier's subcontractor and that are subject to tax.

Section 5 -- Contract Special Terms and Conditions

55. **Statewide Contract.** This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Supplier shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies.

The Supplier shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a) all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b) Tennessee local governmental agencies;
- c) members of the University of Tennessee or Tennessee Board of Regents systems;
- d) any private nonprofit institution of higher education chartered in Tennessee; and,
- e) any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Supplier according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Supplier and Authorized Users.

56. State of Tennessee Administrative Fee. A one percent (1%) administrative fee will be included in the cost of all goods and/or services purchased under this Contract. This one percent (1%) administrative fee will be rebated back to the State of Tennessee based on quarterly contract usage reports documenting State, local government and non-profit entity purchases. The fee is due to the State no later than forty-five (45) days after the end of the specified reporting period.

Calendar Quarter 1 (Jan 1-Mar 31)
Calendar Quarter 2 (Apr 1-June 30)
Calendar Quarter 3 (July 1-Sep 30)
Calendar Quarter 4 (Oct 1-Dec 31)

Supplier shall submit payments to:
Ron Plumb, Director of Financial Management
Department of General Services
22nd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

Contract usage reports shall be submitted to:
Contract Administrator
Department of General Services
3rd Floor, William R. Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Email: Jordan.M.Green@tn.gov
Phone: 615-741-9497

57. Cleanup. The Supplier is responsible for the removal of all debris and shall leave the work area in a "broom clean" condition, less wear and tear excepted. In the event Supplier fails to return the work area to a broom clean condition after completion of work, the State reserves the right to assess the Supplier reasonable costs for cleanup and disposal.

58. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Supplier under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

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

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

- 61. Prison Rape Elimination Act (PREA).** The Supplier must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.
- 62. Partial Takeover of Contract.** The State may, at its convenience and without cause, exercise a partial takeover of any service that the Supplier is obligated to perform under this Contract, including any service which is the subject of a subcontract between Supplier and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Supplier shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Supplier's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Supplier any amounts the Supplier would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Supplier to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- 63. Unencumbered Personnel.** The Supplier shall not restrict its employees, agents, subcontractor or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent Supplier, or an employee, agent, subcontractor or principal of another Supplier with the State.
- 64. Survival.** The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.