



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

**SOLICITATION # 33501-172527
FOR DEPUTY BUILDING INSPECTOR**

1. INTRODUCTION

The State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as “the State,” has issued this solicitation with the intent of awarding a contract for deputy building inspectors to perform building inspections of construction of one and two family homes. In state residential building program jurisdictions and local jurisdictions that adopt and enforce their own building codes, homeowners and contractors are required to obtain a building permit. The construction will be required to meet the minimum construction and safety standards adopted by the State Fire Marshal and pass inspections at certain points during construction. The State Fire Marshal is required by Tenn. Code Ann. § 68-120-101 to perform these inspections within three (3) working days of a request for inspection, except that footer inspections are to be made within one (1) working day of a request for inspection.

2. SCOPE OF SERVICE, CONTRACT PERIOD, TERMS AND CONDITIONS

The *Pro Forma* Contract attached to this Solicitation (Attachment C) represents the contract document that the contractor selected by the state must sign. It specifically 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 reissue a similar solicitation.

EVENT	TIME (central time zone)	DATE
1. Solicitation Issued		October 7, 2016
2. Disability Accommodation Request Deadline	2:00 p.m.	October 12, 2016
3. Written “Questions & Comments” Deadline	2:00 p.m.	October 17, 2016
4. State Response to Written “Questions & Comments”		October 21, 2016
5. Response Deadline	2:00 p.m.	November 4, 2016
6. State Completion of Technical Response Evaluations		November 11, 2016
7. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	November 14, 2016
8. End of Open File Period		November 21, 2016

9. State sends contract to Contractor for signature		November 22, 2016
10. Contractor Signature Deadline	2:00 p.m.	December 2, 2016

4. RESPONSE REQUIREMENTS

4.1. An offer in response to this solicitation must respond only as required by this solicitation document.

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*.

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

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

- include the Offeror’s own contract terms and conditions;
- 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 or subsequent contract negotiations, incorrect information that the Offeror knew or should have known was materially incorrect.

4.4. **Offer Delivery.** No later than the Offer Deadline (refer to section 3, above), a potential contractor must deliver to the state ALL documentation required for the *Qualifications Evidence* in response to this Solicitation. It must be delivered to:

Kim Cooper, Assistant General Counsel
 Department of Commerce and Insurance
 500 James Robertson Parkway
 Nashville, Tennessee 37243

5. OFFER REVIEW & CONTRACT AWARD

An evaluation team of at least three (3) 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 the minimum requirements specified by this solicitation and is, at least, minimally acceptable as a contractor for the subject services.

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, color, religion (subject to Tennessee Code Annotated, Sections 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

6.2. **Communications.** Reference Solicitation # **33501-172527**, in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator.

Kim Cooper, Assistant General Counsel
 Department of Commerce and Insurance
 500 James Robertson Parkway
 Nashville, Tennessee 37243

Unauthorized contact about this solicitation with other employees or officials of the State of Tennessee may result in disqualification from consideration as a contractor.

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, women-owned, and small businesses as well as general, public information relating to this solicitation; 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:

Maliaka Bass, Deputy General Counsel, General Civil Division
Department of Commerce and Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243
maliaka.bass@tn.gov
Telephone: (615) 741-9730
Fax: (615) 741-4000

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 (6) 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 (6) 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 two percent (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 (6) 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.

- 6.5. Before the Contract resulting from this Solicitation is signed, the apparent successful Offeror must be registered with the Department of Revenue for the collection of Tennessee sales and use tax or exempt from such registration. The State shall not approve a contract unless the Offeror provides proof of such registration or proof of exemption. The foregoing is a mandatory requirement of an award of a contract pursuant to this Solicitation.

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).

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		
<u>Reference</u>	<u>Item</u>	<u>Signature</u> – By signing in this column, the Offeror is indicating affirmatively to the respective Item or acknowledging that required information has been attached
A.1.	<p><u>Name:</u></p> <p><u>E-mail Address:</u></p> <p><u>Mailing Address:</u></p> <p><u>Telephone Number:</u></p>	<p>Signature: _____</p>
A.2.	<p>The Offeror has included Solicitation Attachment B, <i>Statement of Certifications and Assurances</i> 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.</p>	<p>Signature: _____</p>
A.3.	<p>Neither the Offeror nor any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee). If there is a possible conflict of interest, an explanation has been included below. <i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any offer or cancel any award.</i></p>	<p>Signature: _____</p>

	<p><i>Explanation:</i></p>	
<p>A.4.</p>	<p>Neither the Offeror nor, 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 <i>nolo contendere</i> to any felony. If there has been any such conviction or plea, an explanation has been included below. <i>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.</i></p>	<p><i>Signature:</i> _____</p>
	<p><i>Explanation:</i></p>	
<p>A.5.</p>	<p>There is not 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.</p> <p>If such exists, list each separately below, 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.</p> <p><i>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.</i></p>	<p><i>Signature:</i> _____</p>
	<p><i>Explanation:</i></p>	
<p>A.6.</p>	<p>The Offeror or any individual who shall perform work under a contract resulting from this Solicitation has a high school diploma or GED certificate.</p>	<p><i>Signature:</i> _____</p>

<p>A.7.</p>	<p>The Offeror or any individual who shall perform work under a contract resulting from this Solicitation has proof of professional incorporation (business <i>must be a Tennessee Professional Corporation (i.e., "P.C.")</i>) in accordance with Tenn. Code. Ann. § 48-101-601. Copies of this documentation are attached.</p>	<p>Signature: _____</p>
<p>A.8.</p>	<p>The Offeror or any individual who shall perform work under a contract resulting from this Solicitation has practical experience consisting of at least four (4) years full time building construction experience or building codes inspection experience in the field of residential or commercial construction.</p>	<p>Signature: _____</p>
<p>A.9.</p>	<p>The Offeror or any individual who shall perform work under a contract resulting from this Solicitation has passed a nationally recognized certification examination for building inspectors through the International Code Council ("ICC"), the National Fire Protection Association ("NFPA") or any other such accrediting professional building organization recognized by the state fire marshal, or has obtained a valid building, mechanical or plumbing inspector certification from the state fire marshal AND has at least two (2) years of full time building construction experience or building codes inspection experience in the field of residential or commercial construction. Copies of certification documentation are attached.</p>	<p>Signature: _____</p>
<p>A.10.</p>	<p>Neither the Offeror nor any individual who shall perform work under a contract resulting from this Solicitation has been a party to a previous contract with the State of Tennessee for building inspection services which was terminated voluntarily or involuntarily. If there has been any such termination, an explanation is included below.</p>	<p>Signature: _____</p>
	<p><i>Explanation:</i></p>	
<p>A.11.</p>	<p>The Offeror has and will maintain a cellular telephone with the capability for voice mail, texting, emailing, data transmission, and/or other similar technology approved by the Department which allows for the receiving of automated calls and the transmission of data.</p>	<p>Signature: _____</p>

A.12.	The Offeror does not have any open complaints with the Tennessee Board for Licensing Contractors and must not have been disciplined by the Board within the last two (2) years prior to submitting this application.	<i>Signature:</i> _____
A.13.	The Offeror will be available to perform inspections in at least three (3) counties within the State of Tennessee within: (1) three (3) business days of a request for a building inspection; and (2) one (1) business day of a request for inspection of a footer.	<i>Signature:</i> _____

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, for the total contract period, all services defined in the Scope of Services specified by the *Pro Forma Contract* attached to the solicitation.
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:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the offer in response to the solicitation is accurate.
7. The offer submitted in response to the solicitation was independently prepared, without collusion, under penalty of perjury.
8. 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.

By signature below, the signatory certifies legal authority to bind the proposing entity to the provisions of this solicitation and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to legally bind the proposing entity.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE INDIVIDUAL OR ENTITY MAKING AN OFFER IN RESPONSE TO THE SUBJECT SOLICITATION

SIGNATURE & DATE:

PRINTED NAME & TITLE:

LEGAL ENTITY NAME:

FEIN or SSN:

PRO FORMA CONTRACT

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the solicitation.

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

This Contract, by and between the State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as the "State" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is to serve as a deputy building inspection services for the provision of inspection of construction of one and two family dwellings, in accordance with applicable law, rules, and instructions of the Commissioner of Commerce and Insurance and/or her agents, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Professional Corporation.

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

Contractor Edison Registration ID # **Number**

A. SCOPE OF SERVICES:

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

A.2. Upon appointment by the Commissioner of Commerce and Insurance (the "Commissioner"), the Contractor shall serve as a Deputy Building Inspector and perform all services specified in this Contract through his or her professional corporation pursuant to Tenn. Code Ann. §§ 48-101-601 – 635, Tenn. Code Ann. § 68-120-101(f) and Tenn. Comp. R. & Regs. 0780-02-23.

A.3. The Contractor shall:

- a. conduct inspection of construction of one and two family dwellings in accordance with all applicable statutes (including but not limited to Tenn. Code Ann. § 68-120-101), rules and regulations of the State of Tennessee, and instructions of the Commissioner or her agents;
- b. conduct inspections within three (3) working days of when the request is made to the inspector, except that an inspection of a footer shall be conduct within one (1) working day of when the request is made to the inspector;
- c. possess and maintain service for a properly functioning cellular phone with the capability for receiving voice mail, texting, emailing, or other similar technology approved by the Commissioner which allows for the receiving of automated calls;
- d. maintain minimum certification requirements in adherence with Tenn. Code Ann. §§ 68-120-101, 68-120-113, 68-120-118 and other relevant law and rules.
- e. submit to the Department of Commerce and Insurance, every two (2) weeks reports of inspections performed and/or documentation directly related to such inspections and other reports as required by the Commissioner or her agents. All inspections performed must be submitted within thirty (30) days from the day of inspections; and
- f. take whatever action necessary to maintain, as current, required certification through the State of Tennessee;
- g. execute a "Disclosure of Interests" Agreement with the State in form and content to Attachment 2 of this Contract.

A.4. Contractor understands and agrees that he or she shall not:

- a. collect monies for building permits, such amounts to be collected by independent issue agents under separate agreement with the State; or
- b. conduct inspections of or on any installations made by the Contractor or any of his or her immediate family. Contractor agrees and understands that conducting inspections of any

installations made by the Contractor or member of his or her immediate family shall constitute grounds for immediate termination of this Contract.

- A.5. Warranty. Contractor represents and warrants that throughout the Term of this Contract (“Warranty Period”), the goods or services provided under this Contract shall conform to the terms and conditions of this Contract. 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 all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, 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.

- A.6. 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.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **DATE** (“Effective Date”) and ending on June 30, 2021, (“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 **five hundred thousand dollars (\$500,000.00)** (“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 in Section C.3 and any Travel Compensation provided in Section C.4. 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 or 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.

- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon payment rates equal to the fee amounts detailed in *Tenn. Code R. & Reg. § 0780-02-23-.08* (as may be amended from time to time).

Service Description	Amount*
Inspections	\$75 per inspection/ \$100 permit
	\$75 per inspection/ \$350 permit
	\$85 per inspection/ \$400 permit
	\$95 per inspection/ \$450 permit
	\$105 per inspection/ \$500 permit
	\$115 per inspection/ \$550 permit
	\$125 per inspection/ \$600+ permit
*Set pursuant to <i>Tenn. Comp R. & Reg. § 0780-02-23-.08</i> .	

- C.4. Travel Compensation. In exigent circumstances, at the discretion of the Director of Fire Prevention, travel expenses may be compensated in accordance with the amounts and limitations specified in the current “State Comprehensive Travel Regulations.
- C.5. Payment Requirements. The completion of all of the following shall constitute an invoice by the Contractor and result in remuneration by the State:
- a. the Deputy Building Inspector has completed, signed, and submitted to the state a “Substitute W-9 Form” (the taxpayer identification number contained in the substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor);
 - b. the independent issue agent has submitted the amount collected for and a copy of a permit sold;
 - c. the Deputy Building Inspector, acting through his or her professional corporation pursuant to *Tennessee Code Annotated, § 48-101-601*, such corporation being the Contractor has performed the inspections corresponding to a permit sold (and referenced in section C.5 a. above) and has completed and submitted to the State all required reports; the State has entered data relevant to the foregoing into its Building Inspection Permit System; and
 - d. the State’s Building Inspection Payment System has calculated the appropriate payment amount.
- C.6. Payment. 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. Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any 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 remuneration for compensable services.
- 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 an "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, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made by automated clearing house.
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number in the Substitute W-9 Form must be the same as the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID.

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:

Gary Farley, Director, Fire Prevention Division –Electrical, Residential, and Marina Section
Department of Commerce and Insurance
500 James Robertson Parkway
Davy Crockett Tower, 9th Floor
Nashville, Tennessee 37243
gary.farley@tn.gov
Telephone: (615) 741-7170
FAX: (615) 253-4895

The Contractor:

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

All instructions, notices, consents, demands, or other communications shall be considered 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 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 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 good or service that has not been provided, nor shall the Contractor be relieved 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 1, 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 for 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, 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. 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 intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.
- 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 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. §§ 6-6-601 – 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 or disqualified.

- 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 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 applicable state and federal laws and regulations in the 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. 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 - 407.
- 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:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c. and clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and,
 - f. the Contractor's response seeking this Contract.

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. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's 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 Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF COMMERCE AND INSURANCE:

JULIE MIX MCPEAK, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

Disclosure of Interests

I hereby submit the following information as being complete and accurate, to the best of my knowledge:

A. Do you have any relatives who engage in work subject to building inspections where you would be doing the building inspections?

NO: _____ YES: _____ (If yes, explain in detail below)

B. Do you perform work subject to building inspections that is required to be inspected under Tennessee State Statutes?

NO: _____ YES: _____ (If yes, explain in detail below)

Subject: Disclosure of Interests

C. Do you own, or have any interest in any company, firm, or business of any sort, that performs any work subject to building inspections that is required to be inspected under Tennessee State Statutes?

NO: _____ YES: _____ (If yes, explain in detail below)

D. Additional Comments:

E. Are additional sheets attached? NO ____ YES ____

I hereby certify that the above information is complete and accurate to the best of my knowledge. I will notify the Assistant Commissioner for Fire Prevention, in writing, if any of the above information changes.

Signature: _____, Deputy Building Inspector ID Number _____

Date: _____