



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

**REQUEST FOR PROPOSALS  
FOR  
EXAMINATION DEVELOPMENT AND ADMINISTRATION FOR  
CANDIDATES FOR LICENSURE BY THE  
TENNESSEE BOARD FOR LICENSING CONTRACTORS**

**RFP # 33501-217601**

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## 1. INTRODUCTION

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The State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as “the State,” issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

### 1.1. Statement of Procurement Purpose

The State intends to secure a contract for examination development and administration services for the Tennessee Board for Licensing Contractors.

### 1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details the State’s requirements:

- 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).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

### 1.3. 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 RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

### 1.4. RFP Communications

1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

**RFP # 33501-217601**

1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Cherrelle Hooper, Associate General Counsel  
 Department of Commerce and Insurance  
 500 James Robertson Parkway  
 Nashville, Tennessee 37243

[ci.procurement@tn.gov](mailto:ci.procurement@tn.gov)  
 Telephone: (615) 741-9730  
 Fax: (615) 741-4000

1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. 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 <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and
- b. 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  
 Department of Commerce and Insurance  
 500 James Robertson Parkway  
 Nashville, Tennessee 37243  
[maliaka.bass@tn.gov](mailto:maliaka.bass@tn.gov)  
 Telephone (615) 741-2199  
 Fax: (615) 741-4000

- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. It is encouraged for suppliers to submit bids digitally.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.7).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/-request-for-proposals--rfp--opportunities1.html> to the following: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities1.html>.
- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.

1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

#### 1.5. **Assistance to Respondents with a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

#### 1.6. **Respondent Required Review & Waiver of Objections**

1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").

1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.

1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

#### 1.7. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate);
- a contact person's name and title; and
- the contact person's mailing address, telephone number, facsimile number, and e-mail address.

**A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.**

#### 1.8. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

## 2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

| EVENT   | TIME<br>(central time zone) | DATE           |
|---|-----------------------------|----------------|
| 1. RFP Issued   |                             | April 7, 2021  |
| 2. Disability Accommodation Request Deadline  | 2:00 p.m.                   | April 12, 2021 |
| 3. Notice of Intent to Respond Deadline   | 2:00 p.m.                   | April 13, 2021 |
| 4. Written "Questions & Comments" Deadline  | 2:00 p.m.                   | April 16, 2021 |
| 5. State Response to Written "Questions & Comments"   |                             | April 22, 2021 |
| 6. Response Deadline  | 2:00 p.m.                   | April 29, 2021 |
| 7. State Completion of Technical Response Evaluations   |                             | May 5, 2021    |
| 8. State Opening & Scoring of Cost Proposals  | 2:00 p.m.                   | May 6, 2021    |
| 9. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection | 2:00 p.m.                   | May 7, 2021    |
| 10. End of Open File Period   |                             | May 14, 2021   |
| 11. State sends contract to Contractor for signature  |                             | May 17, 2021   |
| 12. Contractor Signature Deadline   | 2:00 p.m.                   | May 21, 2021   |

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.7).

### 3. RESPONSE REQUIREMENTS

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#### 3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

**NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.**

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12-point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
  - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

**NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.**

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State on a separate e-mail or CD or USB flash drive from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

### 3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the Technical Response and Cost Proposal files meet all form and content requirements, including all required signatures, as detailed within this RFP.
- 3.2.2. A Respondent must submit their response as specified in one of the two formats below.

#### 3.2.2.1. Digital Media Submission

##### 3.2.2.1.1. Technical Response

The Technical Response document should be in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive and should be clearly identified as the:

**"RFP #33501-217601 TECHNICAL RESPONSE ORIGINAL"**

and five (5) digital copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive clearly labeled:

**"RFP # 33501-217601 TECHNICAL RESPONSE COPY"**

The customer references should be delivered by each reference in accordance with RFP Attachment 6.2, Section B.17

##### 3.2.2.1.2. Cost Proposal:

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

**"RFP #33501-217601 COST PROPOSAL"**

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

#### 3.2.2.2. E-Mail Submission

##### 3.2.2.2.1. Technical Response

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

**"RFP #33501-217601 TECHNICAL RESPONSE"**

The customer references should be delivered by each reference in accordance with RFP Attachment 6.2, Section B.17.

3.2.2.2.2. Cost Proposal:

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

**“RFP #33501-217601 COST PROPOSAL”**

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

- 3.2.3. For e-mail submissions, the Technical Response and Cost Proposal documents must be dispatched to the Solicitation Coordinator in separate e-mail messages. For digital media submissions, a Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

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

**“DO NOT OPEN... RFP # 33501-217601 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”**

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

**“DO NOT OPEN... RFP # 33501-217601 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”**

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

**“RFP # 33501-217601 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”**

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

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

Cherrelle Hooper, Associate General Counsel  
 Department of Commerce and Insurance  
 500 James Robertson Parkway  
 Nashville, Tennessee 37243  
[ci.procurement@tn.gov](mailto:ci.procurement@tn.gov)  
 Telephone: (615) 741-9730



### 3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).
- 3.3.8. 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 RFP:
  - 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  - 3.3.8.2. 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
  - 3.3.8.3. 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.
- 3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

#### 3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

#### 3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

#### 3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

**NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.**

#### 3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

## 4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

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### 4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 2.1). A response must address the final RFP (including its attachments) as amended.

### 4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

### 4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

### 4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

### 4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

#### 4.6. **Insurance**

The State will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

#### 4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. 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 RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, 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.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following:  
<https://tntap.tn.gov/eservices/#1>

#### 4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with Tenn. Code Ann. § 10-7-504(a)(7).

#### 4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the Contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.
- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma Contract*, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

#### 4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

#### 4.11. **Contract Amendment**

After Contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this RFP, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

#### 4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

#### 4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

## 5. EVALUATION & CONTRACT AWARD

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### 5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

| EVALUATION CATEGORY   | MAXIMUM POINTS POSSIBLE |
|---|-------------------------|
| <b>General Qualifications &amp; Experience</b><br>(refer to RFP Attachment 6.2., Section B)             | <b>30</b>               |
| <b>Technical Qualifications, Experience &amp; Approach</b><br>(refer to RFP Attachment 6.2., Section C) | <b>40</b>               |
| <b>Cost Proposal</b><br>(refer to RFP Attachment 6.3.)  | <b>30</b>               |

### 5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A—Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.

- 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
- 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

### 5.3. Contract Award Process

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.
- NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.**
- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited terms and conditions or pricing negotiations prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

**RFP ATTACHMENT 6.1.****RFP # 33501-217601 STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

**The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of the RFP Attachment 6.6., *Pro Forma* Contract for the total Contract Term.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the Contract.
5. The Respondent will comply 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 response submitted to this RFP is accurate.
7. The response submitted to this RFP 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 Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>.

**By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT**

**SIGNATURE:**

\_\_\_\_\_

**PRINTED NAME & TITLE:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

**RESPONDENT LEGAL ENTITY  
NAME:**

\_\_\_\_\_



## RFP ATTACHMENT 6.2. — Section A

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

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

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

| RESPONDENT LEGAL ENTITY NAME:          |           |   |           |
|--|-----------|---|-----------|
| Response Page # (Respondent completes) | Item Ref. | Section A— Mandatory Requirement Items  | Pass/Fail |
|  |           | The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.   |           |
|  |           | The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i> ).   |           |
|  |           | The Technical Response must NOT contain cost or pricing information of any type.  |           |
|  |           | The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.   |           |
|  |           | A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).   |           |
|  |           | A Respondent must NOT submit multiple responses in different forms (as a prime and a subcontractor) (refer to RFP Section 3.3.).  |           |
|  | A.1.      | Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.   |           |
|  | A.2.      | Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest ( <i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict.<br><br>NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award. |           |
|  | A.3.      | Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.   |           |
|  | A.4.      | Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.   |           |

| <b>RESPONDENT LEGAL ENTITY NAME:</b>  |                  |   |                  |
|---|------------------|---|------------------|
| <b>Response Page # (Respondent completes)</b>                                   | <b>Item Ref.</b> | <b>Section A— Mandatory Requirement Items</b>   | <b>Pass/Fail</b> |
|   | <b>A.5.</b>      | Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.) |                  |
| <i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i> |                  |   |                  |

## RFP ATTACHMENT 6.2. — SECTION B

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

**SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

|  |                  |   |
|--|------------------|---|
| <b>RESPONDENT LEGAL ENTITY NAME:</b>             |                  |   |
| <b>Response Page #</b><br>(Respondent completes) | <b>Item Ref.</b> | <b>Section B— General Qualifications &amp; Experience Items</b>   |
|  | <b>B.1.</b>      | Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.   |
|  | <b>B.2.</b>      | Describe the Respondent's form of business ( <i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).   |
|  | <b>B.3.</b>      | Detail the number of years the Respondent has been in business.   |
|  | <b>B.4.</b>      | Briefly describe how long the Respondent has been providing the goods or services required by this RFP.   |
|  | <b>B.5.</b>      | Describe the Respondent's number of employees, client base, and location of offices.  |
|  | <b>B.6.</b>      | Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.  |
|  | <b>B.7.</b>      | Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.  |
|  | <b>B.8.</b>      | Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.  |
|  | <b>B.9.</b>      | Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP.<br><br>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions. |
|  | <b>B.10.</b>     | Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFP.   |

## RFP ATTACHMENT 6.2. — SECTION B (continued)

| RESPONDENT LEGAL ENTITY NAME:             |           |   |
|---|-----------|---|
| Response Page #<br>(Respondent completes) | Item Ref. | Section B— General Qualifications & Experience Items  |
|   |           | NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.   |
|   | B.11.     | Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).   |
|   | B.12.     | Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.   |
|   | B.13.     | Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history.   |
|   | B.14.     | Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: <ul style="list-style-type: none"> <li>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</li> <li>(b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u></li> <li>(c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP.</li> </ul>  |
|   | B.15.     | Provide documentation of the Respondent's commitment to diversity as represented by the following: <ul style="list-style-type: none"> <li>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</li> <li>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises. Please include the following information: <ul style="list-style-type: none"> <li>(i) contract description;</li> <li>(ii) contractor name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran-owned or persons with disabilities);</li> <li>(iii) contractor contact name and telephone number.</li> </ul> </li> <li>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, persons with disabilities and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: <ul style="list-style-type: none"> <li>(i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b>);</li> <li>(ii) anticipated goods or services contract descriptions;</li> </ul> </li> </ul> |

## RFP ATTACHMENT 6.2. — SECTION B (continued)

| RESPONDENT LEGAL ENTITY NAME:             |              |   |
|---|--------------|---|
| Response Page #<br>(Respondent completes) | Item Ref.    | Section B— General Qualifications & Experience Items  |
|   |              | <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, service-disabled veterans, or disability) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>  |
|   | <b>B.16.</b> | <p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p>  |
|   | <b>B.17.</b> | <p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> <li>▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u></li> <li>▪ three (3) completed projects.</li> </ul> <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and ensuring they are e-mailed to the solicitation coordinator or including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires following one of the two processes below.</p> <p>Written:</p> <p>(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <ul style="list-style-type: none"> <li>(i) complete the reference questionnaire;</li> <li>(ii) sign and date the completed reference questionnaire;</li> </ul> |

## RFP ATTACHMENT 6.2. — SECTION B (continued)

| RESPONDENT LEGAL ENTITY NAME:             |              |   |
|---|--------------|---|
| Response Page #<br>(Respondent completes) | Item Ref.    | Section B— General Qualifications & Experience Items  |
|   |              | <p>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</p> <p>(iv) sign his or her name in ink across the sealed portion of the envelope; and</p> <p>(v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</p> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>E-mail:</p> <p>(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) E-mail the reference with a copy of the standard reference questionnaire.</p> <p>(c) Instruct the reference to:</p> <p>(i) complete the reference questionnaire;</p> <p>(ii) sign and date the completed reference questionnaire;</p> <p>(iii) E-mail the reference directly to the Solicitation Coordinator by the RFQ Technical Response Deadline with the Subject line of the e-mail as "[Respondent Name] Reference for RFP 33501-217601.</p> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ The State will not accept late references or references submitted by any means other than the two which are described above, and each reference questionnaire submitted must be completed as required.</li> <li>▪ The State will not review more than the number of required references indicated above.</li> <li>▪ While the State will base its reference check on the contents of the reference e-mails or sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires and may consider clarification responses in the evaluation of references.</li> <li>▪ The State is under <u>no</u> obligation to clarify any reference information.</li> </ul> |
|   | <b>B.18.</b> | <p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p>   |

## RFP ATTACHMENT 6.2. — SECTION B (continued)

|  |                  |  |
|--|------------------|--|
| <b>RESPONDENT LEGAL ENTITY NAME:</b>   |                  |  |
| <b>Response Page #</b><br>(Respondent completes)   | <b>Item Ref.</b> | <b>Section B— General Qualifications &amp; Experience Items</b>  |
|  |                  | (c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and<br><br>(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default. |
|  | <b>B.19.</b>     | If applicable, provide documentation of the Respondent's certification as a National Association of State Contractor Licensing Agencies (NASCLA) Accredited Examination Provider or a NASCLA Approved Administration Provider.   |
| <b>SCORE (for <u>all</u> Section B—Qualifications &amp; Experience Items above):</b><br><i>(maximum possible score = 30)</i> |                  |  |
| <i>State Use – Evaluator Identification:</i>   |                  |  |

## RFP ATTACHMENT 6.2. — SECTION C

## TECHNICAL RESPONSE &amp; EVALUATION GUIDE

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

**0 = little value      1 = poor      2 = fair      3 = satisfactory      4 = good      5 = excellent**

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

| RESPONDENT LEGAL ENTITY NAME:          |           |  |            |                   |                    |
|--|-----------|--|------------|-------------------|--------------------|
| Response Page # (Respondent completes) | Item Ref. | Section C— Technical Qualifications, Experience & Approach Items   | Item Score | Evaluation Factor | Raw Weighted Score |
|  | C.1.      | Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.  |            | 1                 |                    |
|  | C.2.      | Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State's project schedule.  |            | 1                 |                    |
|  | C.3.      | Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule.   |            | 1                 |                    |
|  | C.4.      | Describe the Respondent's years of experience in the development and administration of exam programs.  |            | 1                 |                    |
|  | C.5.      | Provide a narrative describing how the Respondent will provide special testing accommodations.   |            | 1                 |                    |
|  | C.6.      | Provide a narrative describing the Respondent's delivery method of exam results.   |            | 1                 |                    |
|  | C.7.      | Provide a narrative that illustrates how the Respondent will provide a system of security for the examination questions and for the test center security.  |            | 1                 |                    |
|  | C.8.      | Provide a narrative that illustrates how the Respondent will provide security in transmission of test results to the Board for the candidates.   |            | 1                 |                    |
|  | C.9.      | Provide a narrative that illustrates how the Respondent will ensure that examination materials are assembled, produced, and delivered accurately and under secure conditions.  |            | 1                 |                    |
|  | C.10.     | Describe the Respondent's review process in the development, validity and defensibility of exams and exam questions; how the Respondent will develop multiple versions of each exam all comparable in difficulty; and how the Respondent will defend its administration of the exam. |            | 1                 |                    |
|  | C.11.     | Provide a narrative describing how the Respondent will provide assistance and information to exam applicants, education providers and the State in the deployment of services in the exam program.   |            | 1                 |                    |



**RFP ATTACHMENT 6.2. — SECTION C (continued)**

| <b>RESPONDENT LEGAL ENTITY NAME:</b>   |                  |   |                   |                          |   |
|--|------------------|---|-------------------|--------------------------|---|
| <b>Response Page # (Respondent completes)</b>  | <b>Item Ref.</b> | <b>Section C— Technical Qualifications, Experience &amp; Approach Items</b> | <b>Item Score</b> | <b>Evaluation Factor</b> | <b>Raw Weighted Score</b>   |
| <i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i> |                  |   |                   |                          | <b>Total Raw Weighted Score:</b><br><i>(sum of Raw Weighted Scores above)</i> |
| $\frac{\text{Total Raw Weighted Score}}{\text{Maximum Possible Raw Weighted Score}}$ <i>(i.e., 5 x the sum of item weights above)</i>  |                  |   |                   |                          | $\times 40$ <i>(maximum possible score)</i><br><b>= SCORE:</b>                |
| <i>State Use – Evaluator Identification:</i>   |                  |   |                   |                          |   |
| <i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>  |                  |   |                   |                          |   |

## RFP ATTACHMENT 6.3.

**COST PROPOSAL & SCORING GUIDE**

**NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED**

**COST PROPOSAL SCHEDULE**— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

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

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

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

| <b>RESPONDENT SIGNATURE:</b>  |                          |                   |                                    |
|---|--------------------------|-------------------|------------------------------------|
| <b>PRINTED NAME &amp; TITLE:</b>  |                          |                   |                                    |
| <b>DATE:</b>  |                          |                   |                                    |
| <b>RESPONDENT LEGAL ENTITY NAME:</b>  |                          |                   |                                    |
| Cost Item Description   | Proposed Cost            | State Use Only    |                                    |
|   |                          | Evaluation Factor | Evaluation Cost<br>(cost x factor) |
| Business and Law Examination - based upon the "Business and Project Management for Contractors Tennessee Edition" published by the National Association of State Contractor Licensing Agencies (NASCLA) | \$ _____ per examination | 9181              |                                    |
| Commercial Contractor (BC-B) Examination of General Building Contractors  | \$ _____ per examination | 435               |                                    |
| Residential/Commercial/Industrial/Contractor (BC) Examination   | \$ _____ per examination | 897               |                                    |
| Residential Building Contractor (BC-A) Examination  | \$ _____ per examination | 847               |                                    |

## RFP ATTACHMENT 6.3. (continued)

| RESPONDENT LEGAL ENTITY NAME:                                 |                          |                   |                                    |
|---|--------------------------|-------------------|------------------------------------|
| Cost Item Description   | Proposed Cost            | State Use Only    |                                    |
|   |                          | Evaluation Factor | Evaluation Cost<br>(cost x factor) |
| Small Commercial (BC-b[sm]) Examination                       | \$ _____ per examination | 141               |                                    |
| Industrial Building (BC-C) Examination                        | \$ _____ per examination | 70                |                                    |
| Residential/Small Commercial (BC-A,b[sm]) Examination         | \$ _____ per examination | 1196              |                                    |
| Commercial/Industrial Contractor (BC-B,C)                     | \$ _____ per examination | 126               |                                    |
| Electrical (CE) Examination                                   | \$ _____ per examination | 2082              |                                    |
| Residential/Commercial (BC-AB) Examination                    | \$ _____ per examination | 602               |                                    |
| High Voltage (CE-A and H) Examination                         | \$ _____ per examination | 19                |                                    |
| Mechanical Contractor (CMC) Examination                       | \$ _____ per examination | 209               |                                    |
| Plumbing Contractor (CMC-A) Examination                       | \$ _____ per examination | 400               |                                    |
| HVAC-Refrigeration Contractor (CMC-C) Examination             | \$ _____ per examination | 828               |                                    |
| Sprinklers and Fire Protection Contractor (CMC-D) Examination | \$ _____ per examination | 43                |                                    |
| Licensed Masonry Contractor (LMC) Examination                 | \$ _____ per examination | 86                |                                    |
| Limited Licensed Electrician (LLE) Examination                | \$ _____ per examination | 3260              |                                    |

## RFP ATTACHMENT 6.3. (continued)

| RESPONDENT LEGAL ENTITY NAME:  |                          |  |                                    |
|--|--------------------------|--|------------------------------------|
| Cost Item Description  | Proposed Cost            | State Use Only                         |                                    |
|  |                          | Evaluation Factor                      | Evaluation Cost<br>(cost x factor) |
| Limited Licensed Plumber (LLP) Examination   | \$ _____ per examination | 474                                    |                                    |
| Examination Review (all Examinations)  | \$ _____ per review      | 250                                    |                                    |
| Duplicate Score Report (for all examinations)  | \$ _____ per report      | 45                                     |                                    |
| <b>EVALUATION COST AMOUNT</b> (sum of evaluation costs above):   |                          |  |                                    |
| The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score.<br>Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations. |                          |  |                                    |
| $\frac{\text{lowest evaluation cost amount from all proposals}}{\text{evaluation cost amount being evaluated}}$  |                          | $\times 30$<br>(maximum section score) | $=$<br><b>SCORE:</b>               |
| State Use – Solicitation Coordinator Signature, Printed Name & Date:   |                          |  |                                    |

**REFERENCE QUESTIONNAIRE**

**The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.**

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

## RFP # 33501-217601 REFERENCE QUESTIONNAIRE

**REFERENCE SUBJECT:** RESPONDENT NAME (completed by Respondent before reference is requested)

The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire; and follow either process outlined below:
  - Physical
  - seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
  - sign in ink across the sealed portion of the envelope; and
  - return the sealed envelope containing the completed questionnaire directly to the reference subject.

E-Mail

- email the completed Questionnaire to Cherrelle Hooper at [cherrelle.hooper@tn.gov](mailto:cherrelle.hooper@tn.gov)

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

|                        |  |
|------------------------|--|
| <b>NAME:</b>           |  |
| <b>TITLE:</b>          |  |
| <b>TELEPHONE #</b>     |  |
| <b>E-MAIL ADDRESS:</b> |  |

(3) **What goods or services does/did the reference subject provide to your company or organization?**

(4) **What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?**

*Please respond by circling the appropriate number on the scale below.*

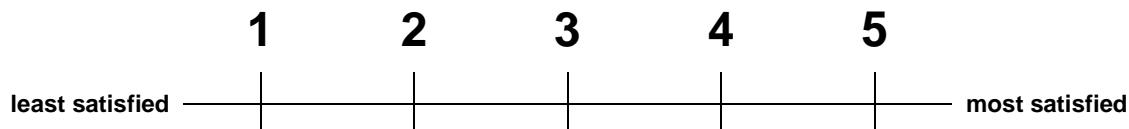
|                 |          |          |          |          |          |                |
|-----------------|----------|----------|----------|----------|----------|----------------|
|                 | <b>1</b> | <b>2</b> | <b>3</b> | <b>4</b> | <b>5</b> |                |
| least satisfied |          |          |          |          |          | most satisfied |

## RFP # 33501-217601 REFERENCE QUESTIONNAIRE — PAGE 2

If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?
- (8) In what areas of goods or service delivery does/did the reference subject excel?
- (9) In what areas of goods or service delivery does/did the reference subject fall short?
- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

*Please respond by circling the appropriate number on the scale below.*



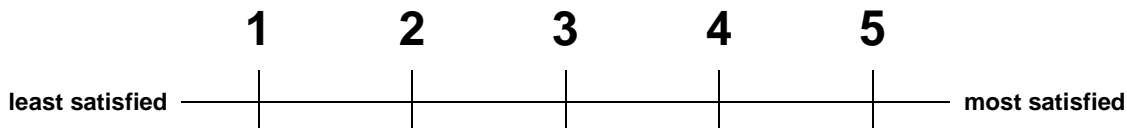
What, if any, comments do you have regarding the score selected above?

**RFP # 33501-217601 REFERENCE QUESTIONNAIRE — PAGE 3**

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(11) **Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?**

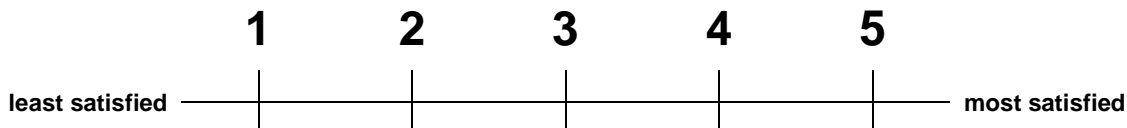
*Please respond by circling the appropriate number on the scale below.*



**What, if any, comments do you have regarding the score selected above?**

(12) **Would you contract again with the reference subject for the same or similar goods or services?**

*Please respond by circling the appropriate number on the scale below.*



**What, if any, comments do you have regarding the score selected above?**

**REFERENCE SIGNATURE:**

(by the individual completing this request for reference information)

\_\_\_\_\_  
(must be the same as the signature across the envelope seal)

**DATE:**

\_\_\_\_\_



## RFP ATTACHMENT 6.5.

## SCORE SUMMARY MATRIX

|  | <i>RESPONDENT NAME</i> |  | <i>RESPONDENT NAME</i> |  | <i>RESPONDENT NAME</i> |  |
|--|------------------------|--|------------------------|--|------------------------|--|
| <b>GENERAL QUALIFICATIONS &amp; EXPERIENCE</b><br>(maximum: § 5.1. NUMBER)             |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>  |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>  |                        |  |                        |  |                        |  |
| <i>REPEAT AS NECESSARY</i>   |                        |  |                        |  |                        |  |
|  | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  |
| <b>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</b><br>(maximum: § 5.1. NUMBER) |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>  |                        |  |                        |  |                        |  |
| <i>EVALUATOR NAME</i>  |                        |  |                        |  |                        |  |
| <i>REPEAT AS NECESSARY</i>   |                        |  |                        |  |                        |  |
|  | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  | <b>AVERAGE:</b>        |  |
| <b>COST PROPOSAL</b><br>(maximum: 30)  | <b>SCORE:</b>          |  | <b>SCORE:</b>          |  | <b>SCORE:</b>          |  |
| <b>TOTAL RESPONSE EVALUATION SCORE:</b><br>(maximum: 100)                              |                        |  |                        |  |                        |  |
| <i>Solicitation Coordinator Signature, Printed Name &amp; Date:</i>                    |                        |  |                        |  |                        |  |

**RFP # 33501-217601 PRO FORMA CONTRACT**

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

**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 ("State") and Contractor Legal Entity Name ("Contractor") is for the provision of examination development and administration services for the Tennessee Board for Licensing Contractors, as further defined in the "SCOPE OF SERVICES." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation or Association, Partnership, Joint Venture, Or Limited Liability Company.  
Contractor Place of Incorporation or Organization: Location  
Contractor Edison Registration ID # Number

**A. SCOPE OF SERVICES:**

A.1. Examination Development. The Contractor shall:

- A.1.1. Develop and administer an examination program in accordance with specifications and procedures approved by the State.
- A.1.2. Develop an item bank of unique forms of examination questions for the Business and Law Exam, and for the following licenses listed in Section C.2. of this Contract. The Contractor shall ensure that all questions are reviewed and approved by the State prior to their use. The Contractor shall ensure that questions are rotated to prevent memorizing content and composed of multiple choices and open book. The Contractor shall ensure that exams are offered electronically by computer and may be offered in paper-pencil format. The Contractor shall ensure that oral exams may be allowed upon special request by the Board in order to accommodate candidates with disabilities.
- A.1.3. Make recommendations to the Board based on sound psychometric analysis for the Board to establish a passing score for all examinations.
- A.1.4. Provide staff support for review of pooled examination questions by the eight (8) contractor professionals appointed to the Board or their designees, to ensure that all questions used on the examinations represent the practice of contracting in Tennessee.
- A.1.5. Ensure the examination question(s) contain subject matter that is in compliance with the construction industry's practices, laws and/or rules.
- A.1.6. Design and produce a candidate guide package acceptable to the Board. The Contractor shall ensure that the guide contains examination outlines, a list of books allowed for open book testing, study references, registration and services information, testing dates, locations and include examples of exam questions. The Contractor shall develop separate guides for all licenses listed in Section C.1. of this Contract. The Contractor shall distribute sufficient quantities of these guides to the State at no charge and make them available on the Internet. The Contractor shall ensure that the guide is revised as needed with the latest information concerning licensing requirements and procedures.
- A.1.7. Defend any legal challenge from any party concerning the development and administration of examinations.

A.2. Examination Administration. The Contractor shall:

- A.2.1. Ensure the examination materials are produced, assembled, and delivered accurately under secure conditions. The Contractor shall also provide a system of security for the examination questions, the test center, and the transmission of test results to the State and to the candidates. The Contractor shall ensure that security violations shall be reported immediately (within three (3) days) to the State's contact for the contract, by telephone and in writing.
- A.2.2. Receive and process applications and accept payment of fees by license candidates in the forms of money order, cashier's check, certified check or credit card with no additional fees imposed, for the examination at the examination site, by mail, by telephone or over the internet. The Contractor shall acknowledge receipt of the candidates' registration.
- A.2.3. Operate a full-time test center in Nashville where candidates may take licensing examinations a minimum of five (5) days per week on all days except for Sundays . The Contractor shall also provide part-time test centers in Memphis and Knoxville, where examinations will be offered at least two (2) days per week (or more if necessary); in Chattanooga and Jackson, the Kingsport, Johnson City or Bristol area, where examinations will be offered one (1) time per month (or more often if necessary). The Contractor shall offer the Tennessee exams at the Contractor's sites located in other states, where they currently provide testing. The Contractor may offer examinations at state approved technology schools to accommodate testing for 20 or more candidates, as approved by the State.
- A.2.4. Provide all physical facilities and test center personnel for testing. The Contractor shall ensure that testing facilities have a comfortable room temperature of 68-72 degrees Fahrenheit to ensure an acceptable testing environment. The Contractor shall make reasonable efforts to accommodate the needs of candidates with disabilities, including, but not limited to, accommodations under the Americans with Disabilities Act. The Contractor shall obtain prior written State approval for location and relocation of test centers and dates of examinations. The Contractor shall communicate with the State immediately, within one (1) hour, should equipment malfunctions require a cancellation of services.
- A.2.5. Provide a toll-free telephone number for candidates to inquire, order materials and register for an exam. The Contractor shall ensure that telephone calls from candidates are handled with a minimum response time. The Contractor shall ensure that candidates are not on hold, without communication with the Contractor's staff, in excess of ten (10) minutes. The Contractor shall return voice mail messages within eight (8) business hours. The Contractor shall provide the State with the direct telephone number to all permanent testing sites. The Contractor shall communicate with the Board within one (1) hour if the Contractor encounters telecommunication malfunctions.
- A.2.6. Provide photograph-bearing score reports to candidates and the State. The Contractor shall inform candidates of their passing or failing score immediately following the examination. The Contractor shall ensure that score reports contain an analysis of areas which indicate the performance level of the candidate in that area. The Contractor shall ensure that the score reports indicate the number of failed exams taken by a candidate. The Contractor shall include a strengths and weaknesses report in the score report to every failing candidate.

- A.2.7. Respond in writing to the State within seven (7) days of examination in connection with any candidate inquiry, appeal or comment regarding the licensing examination. The Contractor shall review individual candidate comments from the testing sessions and provide a summary of the responses to the Board. The Contractor shall respond to individual candidate correspondence within seven (7) days from receipt of correspondence from the candidate.
- A.2.8. Advise the State within twenty-four (24) hours in the event a scheduled exam is cancelled due to inclement weather, war, or natural disaster, in which event the State shall determine whether Contractor will retain applicable examination fees. The Contractor shall permit candidates to reschedule their examinations as soon as possible following cancellation of an exam.
- A.2.9. Provide refunds to exam candidates in the event an exam candidate is unable to take any scheduled exam due to a medical emergency, provided the candidate applies for the refund and provides documentation to evidence such emergency.
- A.2.10. Provide monthly summary statistics score reports to the Executive Director of the Board, in a manner acceptable to the State, separately for each type of license specified in Section C.1. of this Contract. The Contractor shall provide annual score rosters sorted alphabetically by names of all candidates tested.
- A.2.11. Utilize exam administrators experienced in licensure exam administration who are not affiliated with any contractor service education program and who fully understand the examination security requirements. The Contractor shall maintain a manual on uniform testing procedures and shall provide said manual to each exam administrator overseeing examinations given under this contract.
- A.3. Additional Services. The Contractor shall:
- A.3.1. Offer an "Examination Review" service to failed candidates at a cost to be paid by the candidate.
- A.3.2. Offer "Duplicate Score Reports" at a cost to be paid by the candidate.
- A.3.3. Provide information regarding access to or the ability to purchase a "Reference Manual" published by the National Association of State Contractor Licensing Agencies (NASCLA), to individual candidates for the Business and Law examination, at a cost to be paid by the candidate.
- A.3.4. Provide information to candidates regarding access to or purchase of code or reference books identified in testing information guides provided to candidates.

**B. TERM OF CONTRACT:**

This Contract shall be effective on July 1, 2021 ("Effective Date") and extend for a period of sixty (60) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. There shall be no cost to the State for the performance of services under this Contract.

- C.2. In consideration of products and services provided hereunder by the Contractor, the Contractor shall charge and collect from each candidate registered for an examination, re-examination or review, the applicable fee as follows:

| Service Description   | Fee                      |
|---|--------------------------|
| Business and Law Examination - based upon the "Business and Project Management for Contractors Tennessee Edition" published by the National Association of State Contractor Licensing Agencies (NASCLA) | \$ _____ per examination |
| Commercial Contractor (BC-B) Examination<br>General Building Contractors  | \$ _____ per examination |
| Residential/Commercial/Industrial/Contractor (BC) Examination   | \$ _____ per examination |
| Residential Building Contractor (BC-A) Examination  | \$ _____ per examination |
| Small Commercial (BC-b[sm]) Examination   | \$ _____ per examination |
| Industrial Building (BC-C) Examination  | \$ _____ per examination |
| Residential/Small Commercial (BC-A,b[sm]) Examination   | \$ _____ per examination |
| Commercial/Industrial Contractor (BC-B,C)   | \$ _____ per examination |
| Electrical (CE) Examination   | \$ _____ per examination |
| Residential/Commercial (BC-AB) Examination  | \$ _____ per examination |
| High Voltage (CE-A and H) Examination   | \$ _____ per examination |
| Mechanical Contractor (CMC) Examination   | \$ _____ per examination |
| Plumbing Contractor (CMC-A) Examination   | \$ _____ per examination |
| HVAC-Refrigeration Contractor (CMC-C) Examination   | \$ _____ per examination |
| Sprinklers and Fire Protection Contractor (CMC-D) Examination   | \$ _____ per examination |
| Licensed Masonry Contractor (LMC) Examination   | \$ _____ per examination |
| Limited Licensed Electrician (LLE) Examination  | \$ _____ per examination |
| Limited Licensed Plumber (LLP) Examination  | \$ _____ per examination |
| Examination Review (all Examinations)   | \$ _____ per review      |

|   |                           |
|---|---------------------------|
| Duplicate Score Report (for all examinations) | \$ _____ per score report |
|---|---------------------------|

- C.3. The fees in Section C.2. shall remain in effect for the Contract Term and shall not be subject to adjustment or escalation for any reason. The costs of the score report referenced in Section A.2.6. shall be included in the examination fee at no extra cost to the candidate. Fees collected by the Contractor shall constitute the entire compensation due contractor for any and all obligations and services provided under this Contract regardless of the difficulty, hours worked, or materials or equipment required and includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contract.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Carolyn Lazenby, Executive Director  
Tennessee Department of Commerce and Insurance  
Tennessee Board for Licensing Contractors  
500 James Robertson Parkway  
Nashville, Tennessee 37243-2273  
Carolyn.Lazenby@tn.gov  
Telephone (615) 741-1202  
Fax: (615) 532-2868

The Contractor:

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

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written

notice before the effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.5. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.6. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part of the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.7. Conflicts of Interest. The Contractor warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.8. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Prohibition of Illegal Immigrants. The requirements of Tennessee Code Ann. §12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an



illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tennessee Code Ann. § 12-3-309 for acts or omissions occurring after its effective date. This law requires the Chief Procurement Officer to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.10. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.14. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the Parties that such Parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act (“PPACA”) with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor’s failure to fulfill its PPACA responsibilities for itself or its employees.
- D.16. State Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise.
- D.17. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties’ control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.18. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.19. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tennessee Code Ann. §§ 9-8-101-408.
- D.20. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties’ agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.21. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.22. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.23. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor’s duties, responsibilities, and performance of this Contract, these items shall govern in the order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A;
  - c. any clarifications of or addenda to the Contractor’s proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;

- e. any technical specifications provided to proposers during the procurement process to award this Contract; and
- f. the Contractor's response seeking this Contract.

D.24. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than

thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

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

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).  
The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

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

c. Automobile Liability Insurance

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

d. Professional Liability Insurance

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

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

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

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

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

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

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

**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. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

E.3. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.4. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

E.5. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

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

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

E.7. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.8. Transfer of Contractor's Obligations.

- a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the "New Entity".
- b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include:
  - i. the date and terms of the merger, acquisition or sale, including specifically, but



- not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
- ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of,
    - (1) Debt;
    - (2) Assets;
    - (3) Liabilities;
    - (4) Cash flow
    - (5) Percentage of the total revenues of the company that are represented by this Contract;
    - (6) The most recent annual financial reports;
    - (7) The most recent annual financial reports filed with government agencies, if applicable.
  - iii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
    - (1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,
    - (2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
  - iv. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.
  - c. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of incorporation, and other documentation required to effectuate the transfer.
  - d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
    - i. has been debarred from State or Federal contracting in the past five years
    - ii. has had a contract terminated for cause by the State of Tennessee within the

past five years.

The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
- f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Ann. § 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.

E.9. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that the Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this section shall survive the termination of this Contract.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF COMMERCE AND INSURANCE:**

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**CARTER LAWRENCE, COMMISSIONER**

**DATE**

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

|   |  |
|---|--|
| <b>SUBJECT CONTRACT NUMBER:</b>             |  |
| <b>CONTRACTOR LEGAL ENTITY NAME:</b>        |  |
| <b>EDISON VENDOR IDENTIFICATION NUMBER:</b> |  |

**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.**

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**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.

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**PRINTED NAME AND TITLE OF SIGNATORY**


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**DATE OF ATTESTATION**