



**STATE OF TENNESSEE
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT**

**REQUEST FOR QUALIFICATIONS
FOR
WEST TENNESSEE COMMUNITY PLANNING SERVICES**

RFQ #33007-14222

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1. INTRODUCTION

The State of Tennessee, Department of Economic and Community Development, hereinafter referred to as “the State,” issues this Request for Qualifications (“RFQ”) to define mandatory goods or services requirements; solicit responses; detail response requirements; and outline the State’s process for evaluating responses.

Through this RFQ or any subsequent solicitation, the State seeks to buy the requested goods or services and to give ALL qualified respondents, including those that are owned by minorities, women, service-disabled veterans, persons with disabilities, and small business enterprises, the opportunity to do business with the state as contractors or subcontractors.

1.1. Statement of Procurement Purpose

In September of 2021, the State with Ford and SK Innovation, announced the Blue Oval City project, which is projected to result in the creation of approximately 5,800 jobs on the Memphis Regional Megasite. This will also result in other job creation projects in the surrounding communities through suppliers to Ford and SK Innovation. As a result of the project, the communities in West Tennessee will see unprecedented growth and development. The State intends to procure a planning consultant, professional consultant or consultant firm, referred to as the “Contractor”, to perform planning studies and related analyses to help west Tennessee communities prepare for future short and long term needs due to this development. The Contractor’s studies and analysis will focus on infrastructure and land use.

Respondents should have the capability and capacity to perform a wide range of planning and conceptual design tasks. Planning assistance may include population projections, water and sewer utility planning, regional water and sewer development planning and consultation, housing planning, land use planning, rail development planning, and development of conceptual design/engineering studies/reports.

The Contractor will produce the following: 1) a regional plan that considers the impacts to the entire twenty-one (21) county region to population, housing, water and sewer usage, land use, and rail usage and 2) individual plans for regions, counties, and/or cities as requested by the communities and the State that align with the regional plan. Regions are defined as Small Regions, up to three local government unites, and Large Regions, up to four or more local government unites.

Upon completion of the regional plan, the Contractor will work with the State to determine which communities can be served, what types of plans will be produced for each such community, the scope of the plans, and the budget for each plan based on the hourly negotiated with the awarded Contractor.

All plans are to include research/data on the potential impacts of the Blue Oval City and potential suppliers to the communities, options for communities to prepare for such impacts, recommendations, and potential funding sources to implement any recommendation. The scope of each plan will be developed by the State, the Contractor, and the impacted communities. As each community is different, the Contractor will create each plan based on a community’s specific needs, taking into consideration that some communities will already have plans that will need updates while other communities will need entirely new plans.

The Contractor will complete the requirements as outlined in Section A of RFP Attachment 6.6., *pro forma* Contract. Specifically, the Contractor will be required to complete up to 60 individual plans for communities in the twenty-one (21) West Tennessee counties that address the following: population projections; water and sewer utility planning; regional water and sewer development planning; housing planning; land use planning; rail development and/or development of conceptual engineering studies/reports with all plans including: potential impacts,

options for development; recommendations; and potential funding sources. Some communities will need assistance with regional water or sewer planning to encourage regional development of utilities. To complete the plans, the Contractor will be required to conduct at least one meeting with each community before preparing the plans and one meeting with each community to present the plan to relevant stakeholders. Additional information related to the program and recently held community impact meetings may be found at the following link: [Blue Oval City News \(tn.gov\)](https://www.tn.gov/news/2022/09/09/blue-oval-city-news).

The State intends issue a single Contract for a five (5) year period. In no event shall the maximum liability of the State resulting from this solicitation exceed Five Million Dollars and no cents (\$5,000,000.00) ("Maximum Liability). The State encourages participation by firms that are certified Disadvantaged Business Enterprises owned by minorities.

1.2. Notice of Intent to Respond

Before the Notice of Intent to Respond Deadline detailed in RFQ § 2, Schedule of Events, potential 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, the contact person's mailing address, telephone number, facsimile, number, and e-mail address. Filing a Notice of Intent to Respond is not a prerequisite for submitting a response; however, it is necessary to ensure receipt of notices and communications relating to this RFQ.

2. RFQ SCHEDULE OF EVENTS

The following schedule represents the State's best estimates for this RFQ; however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or cancel and reissue a similar solicitation. Nothing in this RFQ is intended by the State to create any property rights or expectations of a property right in any Respondent.

EVENT		TIME (Central Time Zone)	DATE (all dates are State business days)
1.	RFQ Issued		September 21, 2022
2.	Disability Accommodation Request Deadline	2:00 p.m.	September 26, 2022
3.	Notice of Intent to Respond Deadline	2:00 p.m.	September 27, 2022
4.	Written "Questions & Comments" Deadline	2:00 p.m.	October 3, 2022
5.	State response to written "Questions & Comments"		October 10, 2022
6.	RFQ Response Deadline	2:00 p.m.	October 17, 2022
7.	RFQ Negotiations		October 24-26, 2022
8.	State Notice of Intent to Award Released and RFQ Files Opened for Public Inspection		October 27, 2022

9.	End of Open File Period		November 3, 2022
10.	State sends contract to Contractor for signature		November 7, 2022
11.	Contractor Signature Deadline	2:00 p.m.	November 10, 2022

3. RESPONSE REQUIREMENTS

3.1. Response Contents: A response to this RFQ should address the following:

- 3.1.1. Mandatory Requirements: This section details the mandatory technical, functional, and experience requirements that must be demonstrated in the response to this RFQ in order to be passed on to Phase II of the Technical Response evaluation. A Respondent should duplicate and use RFQ Attachment A as a guide to organize responses for the Mandatory Requirements of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table. This section is included in the State's evaluation as to whether or not a Respondent meets mandatory qualifications (Phase I).
- 3.1.2. General Qualifications & Experience: This section is included in the State's evaluation of Phase II of the Technical Response Evaluation and details general information and qualifications that must be demonstrated in the response to this RFQ. A Respondent should duplicate and use RFQ Attachment B as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table.
- 3.1.3. Technical Qualifications, Experience & Approach: This section is also included in the State's evaluation of Phase II of the Technical Response Evaluation and details technical qualifications, experience, and approach items that must be demonstrated in the response to this RFQ. A Respondent should duplicate and use RFQ Attachment C as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table.

3.2. Response Delivery Location

A Respondent must ensure that the State receives a Response to this RFQ no later than the Response Deadline time and dates detailed in the RFQ § 2, Schedule of Events. All responses must be delivered to:

Mike Bentheimer
 Central Procurement Office
 Tennessee Tower, 3rd Floor
 312 Rosa L. Parks Ave.
 Nashville, Tennessee 37243

3.3. Response Format

- 3.3.1. A Respondent must ensure that the original response meets all form and content requirements detailed within this RFQ.
- 3.3.2. A Respondent must submit original response documents and copies as specified below.

3.3.2.1. Technical Response

One (1) original Technical Response paper document clearly labeled:

“RFQ #33007-14222 TECHNICAL RESPONSE ORIGINAL”

and five (5) copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, USB flash drive labeled:

“RFQ #33007-14222 TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references or cost information in the general and technical evaluation phase. However, any other discrepancy between the paper response document and digital copies may result in the State rejecting the response as nonresponsive.

3.4. Response Prohibitions: A response to this RFQ shall not:

- 3.4.1. Restrict the rights of the State or otherwise qualify the response to this RFQ;
- 3.4.2. Include, for consideration in this procurement process or subsequent contract negotiations, incorrect information that the Respondent knew or should have known was materially incorrect;
- 3.4.3. Include more than one response, per Respondent, to this RFQ;
- 3.4.4. Include any information concerning costs (in specific dollars or numbers) associated with the Technical Response;
- 3.4.5. Include the respondent's own contract terms and conditions (unless specifically requested by the RFQ); or
- 3.4.6. Include the respondent as a prime contractor while also permitting one or more other respondents to offer the respondent as a subcontractor in their own responses.

3.5. Response Errors & Revisions

A Respondent is responsible for any and all errors or omissions in its response to this RFQ. A Respondent will not be allowed to alter or revise its response after the Response Deadline time and dates as detailed in RFQ § 2, Schedule of Events, unless such is formally requested in writing by the State (e.g., through a request for clarification, etc.).

3.6. Response Withdrawal

A Respondent may withdraw a response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events, by submitting a written signed request by an authorized representative of the Respondent. After withdrawing a response, a Respondent may submit another Response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events.

3.7. Response Preparation Costs

The State will not pay any costs associated with the preparation, submittal, or presentation of any response. Each Respondent is solely responsible for the costs it incurs in responding to this RFQ.

4. GENERAL INFORMATION & REQUIREMENTS

4.1. Communications

- 4.1.1. Respondents shall reference RFQ #33007-14222 in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator:

Mike Bentheimer, Sourcing Team Lead
 312 Rosa L Parks Ave, 3rd Floor
 615-532-1922
mike.bentheimer@tn.gov

The State will convey all official responses and communications related to this RFQ to the potential respondents from whom the State has received a Notice of Intent to Respond (refer to RFQ Section 1.3.).

- 4.1.2. Potential respondents with a handicap or disability may receive accommodation relating to the communication of this RFQ and participating in the RFQ process. Potential respondents may contact the RFQ Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in RFQ § 2, Schedule of Events.
- 4.1.3. **Unauthorized contact about this RFQ with other employees or officials of the State of Tennessee may result in disqualification from contract award consideration.**
- 4.1.4. Notwithstanding the foregoing, potential Respondents may also contact the following as appropriate:
- 4.1.4.1. Staff of the Governor's Office of Diversity Business Enterprise may be contacted for assistance with respect to available minority-owned, woman-owned, service-disabled veteran-owned, businesses owned by persons with disabilities and small business enterprises as well as general public information relating to this request; or
- 4.1.4.2. The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Garrett Guillory, Director of Contracts
 312 Rosa L. Parks Ave, 27th Floor
 Nashville, TN 37243
 615-532-6346
Garrett.E.Guillory@tn.gov

4.2. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a contract pursuant to this solicitation or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion (subject to Tenn. Code Ann. §§ 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

4.3. Conflict of Interest

- 4.3.1. The State may not consider a proposal from an individual who is, or within the past six (6) months has been, a State employee. For these purposes,
- 4.3.1.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - 4.3.1.2. A contract with or a proposal 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
 - 4.3.1.3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six 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.
- 4.3.2. This RFQ is also subject to Tenn. Code Ann. § 12-4-101—105.

4.4. Respondent Required Review & Waiver of Objections

- 4.4.1. Each potential respondent must carefully review this RFQ, including but not limited to, attachments, the RFQ Attachment G, *pro forma* Contract, and any amendments for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called “questions and comments”).
- 4.4.2. Any potential respondent having questions and comments concerning this RFQ must provide such in writing to the State no later than the written “Questions & Comments Deadline” detailed in RFQ § 2, Schedule of Events.
- 4.4.3. Protests based on any objection 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.”

4.5. Disclosure of Response Contents

- 4.5.1. All materials submitted to the State in response to this solicitation become property of the State of Tennessee. Selection for award does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full contents and associated documents submitted in response to this request will become open to public inspection in accordance with the laws of the State of Tennessee. Refer to RFQ § 2, Schedule of Events.
- 4.5.2. The RFQ responses will be available for public inspection only after the completion of evaluation of the RFQ or any resulting solicitation which this RFQ becomes a part of, whichever is later.

4.6. Notice of Professional Licensure, Insurance, and Department of Revenue Registration Requirements

- 4.6.1. 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 part of a response to this RFQ, shall be properly licensed to render such opinions.
- 4.6.2. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Respondent to submit evidence of proper licensure.
- 4.6.3. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must provide a valid, Certificate of Insurance indicating current insurance coverage meeting minimum requirements as may be specified by the RFQ.

- 4.6.4. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve 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>

4.7. **RFQ Amendments & Cancellation**

- 4.7.1. The State reserves the right to amend this RFQ at any time, provided that it is amended in writing. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential respondents to meet the deadlines and revise the RFQ Schedule of Events if deemed appropriate. If a RFQ amendment is issued, the State will convey it to potential respondents who submitted a Notice of Intent to Respond (refer to RFQ § 1.3). A response must address the final RFQ (including its attachments) as may be amended.
- 4.7.2. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFQ in accordance with applicable laws and regulations.

4.8. **State Right of Rejection**

- 4.8.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.
- 4.8.2. The State may deem as nonresponsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFQ. Notwithstanding the foregoing, the State reserves the right to seek clarifications or to waive, at its sole discretion, a response's minor variances from full compliance with this RFQ. If the State waives variances in a response, such waiver shall not modify the RFQ requirements or excuse the Respondent from full compliance with such, and the State may hold any resulting vendor to strict compliance with this RFQ.
- 4.8.3. The State will review the response evaluation record and any other available information pertinent to whether or not each respondent is responsive and responsible. If the evaluation team identifies any respondent that appears not to meet the responsive and responsible thresholds such that the team would not recommend the respondent for potential contract award, this determination will be fully documented for the record. ("Responsive" is defined as submitting a response that conforms in all material respects to the RFQ. "Responsible" is defined as having the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

4.9. **Assignment & Subcontracting**

- 4.9.1. The vendor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFQ without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.
- 4.9.2. If a Respondent intends to use subcontractors, the response to this RFQ must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFQ Attachment B, Item B.14.).
- 4.9.3. Subcontractors identified within a response to this RFQ 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.

4.9.4. The Contractor resulting from this RFQ may only substitute another subcontractor for a proposed subcontractor at the discretion of the State and with the State's prior, written approval.

4.9.5. Notwithstanding any State approval relating to subcontracts, the Contractor resulting from this RFQ will be the prime contractor and will be responsible for all work under the Contract.

4.10. **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 RFQ process.

5. PROCUREMENT PROCESS & CONTRACT AWARD

- 5.1. The complete vendor selection will be a two-part process: (1) Qualification of Technical Responses; and (2) successful contract negotiation.
- 5.2. Qualification of Technical Responses: Technical Responses will be short-listed for further evaluation, analysis or negotiation if they are apparently responsive, responsible, and within the competitive range (“Competitive Range”). A Technical Response will be deemed within the Competitive Range based on the following criterion:
For the purpose of this procurement, the Competitive Range will be considered the single best evaluated proposer. Technical responses that have been evaluated in Phases I and II below and have been found to be responsive and responsible will have technical scores totaled and put in ordinal ranking. The top ranked respondent will receive cost proposal materials upon completion of ordinal rankings. Please see RFQ Section 5.3. for further instructions on the negotiation process.

Phase I: The State will evaluate the Mandatory Requirements set forth in RFQ Attachment A on a pass/fail basis.

Phase II: Following the Phase I evaluation, the State will apply a standard equitable evaluation model, which will represent a qualitative assessment of each response. Each response will be scored by Evaluation Team members according to the Technical Response & Evaluation Guides (See RFQ Attachments B & C).

The Solicitation Coordinator will total the average score from the evaluation team for each responsive and responsible Respondent’s Technical Response Points for RFQ Attachments B & C to determine which of the Respondents are considered Qualified and within the Competitive Range.

- 5.3. Clarifications and Negotiations: The State reserves the right to award a contract on the basis of initial responses received; therefore, each response should contain the respondent’s best terms from a technical and cost standpoint. However, the State reserves the right to conduct clarifications or negotiations with respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
- 5.3.1. Clarifications: The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State’s specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification round(s). Each clarification sought by the State may be unique to an individual respondent.
- 5.3.2. Negotiations: The State may elect to negotiate with Qualified Respondents, within the competitive range, by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds.
- 5.3.2.1. Cost Negotiations: All responsive respondents within the competitive range will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget

availability, or other methods that do not reveal individual respondent pricing. During target price negotiations, respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices.

5.3.2.2. If the State determines costs and contract finalization discussions and negotiations are not productive, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.

5.4. Evaluation Guide

The State will consider qualifications, experience, technical approach, and cost (if applicable) in the evaluation of responses and award points in each of the categories detailed below. The maximum evaluation points possible for each category are detailed below.

Evaluation Category	Maximum Points Possible
Mandatory Requirements (refer to RFQ Attachment A)	Pass/Fail
General Qualifications, Experience, Technical Qualifications, Experience & Approach (refer to RFQ Attachment B)	30
Technical Qualifications, Experience & Approach (refer to RFQ Attachment C)	70

5.5. Contract Award

- 5.5.1. The Solicitation Coordinator will submit the Evaluation Team determinations and response scores to the head of the contracting agency, or the agency head's designee, for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.5.2. The contracting agency head, or the agency head's designee, will determine the apparent best-evaluated response. (To effect a contract award to a Respondent other than the one receiving the highest evaluation score, the head of the contracting agency must provide written justification and obtain written approval of the Chief Procurement Officer and the Comptroller of the Treasury.)
- 5.5.3. The State reserves the right to make an award without further discussion of any response.
- 5.5.4. The State will issue an Evaluation Notice and make the RFQ files available for public inspection at the time and date specified in the RFQ §2, Schedule of Events.

NOTICE: The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Respondent identified as the apparent best evaluated or any other Respondent.

- 5.5.5. The Respondent identified as offering the apparent best-evaluated must sign a contract drawn by the State pursuant to this RFQ. The contract shall be substantially the same as the RFQ Attachment F, *pro forma* contract. The Respondent must sign said contract no later than the Respondent Contract Signature Deadline detailed in RFQ § 2, Schedule of Events. If the Respondent fails to provide the signed contract by the deadline, the State may determine the Respondent is non-responsive to this RFQ and reject the response.
- 5.5.6. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation 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 evaluation or negatively impact the competitive nature of the RFQ and contractor selection process.

- 5.5.7. If the State determines that a response is nonresponsive and rejects it, the Solicitation Coordinator will re-calculate scores to determine (or re-determine) the apparent best-evaluated response.

ATTACHMENT A**TECHNICAL RESPONSE & EVALUATION GUIDE**

All Respondents must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). All Respondents must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review all responses 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 Evaluation Team must review the responses and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFQ requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Technical Response must be delivered to the State no later than the Technical Response Deadline specified in the RFQ § 2, Schedule of Events.	
		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.	
		A Respondent must not submit multiple responses in different forms (as a prime and a subcontractor).	
	A.1.	Provide the Statement of Certifications and Assurances (RFQ Attachment E) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFQ 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 perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.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.	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
	A.4.	Please provide evidence that your firm and any engineer providing services under this RFP are properly licensed, by providing the current, active license of each entity.	
<i>State Use – RFQ Coordinator Signature, Printed Name & Date:</i>			

ATTACHMENT B**TECHNICAL RESPONSE & 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. Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	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.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been performing the goods or services required by this RFQ.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFQ, 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.8.	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.9.	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 RFQ 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 RFQ. 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

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.
	B.10.	Provide a statement of whether there is 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 RFQ. 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 such licensure detailing the state of licensure and licensure number 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 RFQ (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed contract team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to provide the goods or services required by this RFQ, illustrating the lines of authority, and designating the individual responsible for the completion of each task and deliverable of the RFQ.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to perform tasks required by this RFQ along with the estimated number of hours that each individual will devote to the required tasks. 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 accomplish the work required by this RFQ, and if so, detail: (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the work each subcontractor will perform; <u>and</u> (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFQ.
	B.15.	Provide documentation of the Respondent's commitment to diversity as represented by the following: (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, businesses owned by persons with disabilities, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u> . Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, service-disabled veterans,

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>businesses owned by persons with disabilities, and small business enterprises. Please include the following information:</p> <ul style="list-style-type: none"> (i) contract description; (ii) contractor name and ownership characteristics (<i>i.e.</i>, ethnicity, gender, service-disabled, disability); and (iii) contractor contact name and telephone number. <p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, service-disabled veterans, businesses owned by persons with disabilities, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFQ. Please include the following information:</p> <ul style="list-style-type: none"> (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 DO NOT INCLUDE DOLLAR AMOUNTS); (ii) anticipated goods or services contract descriptions; (iii) names and ownership characteristics (<i>i.e.</i>, ethnicity, gender, service-disabled veterans, disability) of anticipated subcontractors and supply contractors. <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 https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 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, businesses owned by persons with disabilities, and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<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-year period. If so, provide the following information for all current and completed contracts:</p> <ul style="list-style-type: none"> (a) the name, title, telephone number and e-mail address of the State contact responsible for the contract at issue; (b) the name of the procuring State agency; (c) a brief description of the contract's specification for goods or scope of services; (d) the contract term; and (e) the contract number.
	B.17.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<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> <p>(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</p> <ul style="list-style-type: none"> ▪ 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.
SCORE (for all Section B— Qualifications & Experience Items above): (maximum possible score = 30)		
<i>State Use – Evaluator Identification:</i>		

ATTACHMENT C**TECHNICAL RESPONSE & EVALUATION GUIDE**

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the State would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

The Evaluation Team, made up of three (3) 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 scores 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. Include a timeline for the development of the regional plan and when individual plans can begin.		10	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project (including information on subcontractors and staffing), ensure completion of the scope of services (up to 60 individual plans), and accomplish required objectives within the State's project schedule.		10	
	C.4.	Provide a listing of each type of service described in Section A.2. of the Pro Forma Contract that the respondent (or proposed subcontractor) has the ability to provide, including a recent example of work for each, within the last three (3) years.		10	
	C.5.	Describe the Respondent's experience or past work developing plans in response to significant community change or potential for change (i.e. major industrial announcement, etc.)		5	
	C.6.	Describe the types of recommendations a plan would likely include related to the requirements specified in Sections A.2 and A.3 of the Pro Forma contract.		10	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		Provide a sample plan demonstrating how the recommendations would be organized and presented.			
	C.7.	Describe the Respondent’s approach in identifying and recommending potential funding sources to be used for implementation.		5	
	C.8.	Describe the Respondent’s approach in developing an implementation plan which details suggestions for community action. Provide a sample implementation plan demonstrating how the information would be organized and presented.		5	
<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>			Total Raw Weighted Score: <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>			X 70 <i>(maximum possible score)</i>		= SCORE:
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

ATTACHMENT D**STATEMENT OF CERTIFICATIONS AND ASSURANCES**

An individual responding in his or her individual capacity or legally empowered to contractually bind the Respondent must complete and sign the Statement of Certifications and Assurances below as required, and this signed statement must be included with the response as required by the Request for Qualifications.

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 RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
4. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
5. The Respondent will comply, as applicable, with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
7. The Response submitted to the RFQ was independently prepared, without collusion, and 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 the request or any potential resulting contract.
9. The Response submitted in response to the RFQ shall remain valid for at least 120 days subsequent to the date of the Response opening and thereafter in accordance with any contract pursuant to the RFQ.
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 signature below, the signatory certifies legal authority to bind the responding entity to the provisions of this request and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to be personally bound or to legally bind the responding entity.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.

SIGNATURE & DATE:

PRINTED NAME & TITLE:

LEGAL ENTITY NAME:

ATTACHMENT E**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 responsible for obtaining completed reference questionnaires as detailed below.

Provide references from individuals who are not current State employees of the procuring State Agency for projects similar to the goods or services sought under this RFQ and which represent:

- two (2) contracts Respondent currently services that are similar in size and scope to the services required by this RFP; and
- three (3) completed contracts that are similar in size and scope to the services required by this RFQ.

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 individual contact reference provided for each contract or project shall not be a current State employee of the procuring State agency. Procuring State agencies that accept references from another State agency shall document, in writing, a plan to ensure that no contact is made between the procuring State agency and a referring State agency. The standard reference questionnaire, should be used and completed, and is provided on the next page at RFQ Attachment E.

In order to obtain and submit the completed reference questionnaires following one of the two processes below.

Written:

- (a) Add the Respondent's name to the standard reference questionnaire at RFQ Attachment E and make a copy for each reference.
- (b) Send a reference questionnaire and new, standard #10 envelope to each reference.
- (c) Instruct the reference to:
 - (i) complete the reference questionnaire;
 - (ii) sign and date the completed reference questionnaire;
 - (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;
 - (iv) sign his or her name in ink across the sealed portion of the envelope; and
 - (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).
- (d) Do NOT open the sealed references upon receipt.
- (e) Enclose all sealed reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.

Email:

- (a) Add the Respondent's name to the standard reference questionnaire at RFQ Attachment E and make a copy for each reference.
- (b) E-mail a reference questionnaire to each reference.
- (c) Instruct the reference to:
 - (i) complete the reference questionnaire;
 - (ii) sign and date the completed reference questionnaire;

- (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’s Name] Reference for RFQ # 33007-14222”.

NOTES:

- 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.
- The State will not review more than the number of required references indicated above.
- 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.

- The State is under no obligation to clarify any reference information

ATTACHMENT E**RFQ # 33007-14222 REFERENCE QUESTIONNAIRE**

RESPONDENT NAME: RESPONDENT NAME (completed by respondent before reference is requested)

The "respondent name" specified above, intends to submit a response to the State of Tennessee in response to the Request for Qualifications (RFQ) indicated. As a part of such response, the respondent 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 respondent.

E-Mail

- e-mail the completed questionnaire to:
Mike Bentheimer; mike.bentheimer@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.**

NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) **What goods or services do/did the vendor provide to your company or organization?**

- (4) **If the goods or services that the vendor provided to your company or organization are completed, were the goods or services completed in compliance with the terms of the contract, on time, and within budget? If not, please explain.**

- (5) **If the vendor 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.**

- (6) **How satisfied are you with the vendor's ability to perform based on your expectations and according to the contractual arrangements?**

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

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

DATE:

ATTACHMENT F**RFQ #33007-14222 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 RFQ.

If the contract is awarded to a governmental entity established pursuant to *Tennessee Code Annotated* and separate and apart from the State (e.g., a human resource agency, a developmental district, etc.), the standard terms and conditions of the contract shall be revised accordingly. If the contract is awarded to a campus or institute of the University of Tennessee system, an institution governed by the Tennessee Board of Regents, or a State University or Locally Governed Institution, the standard terms and conditions of the contract shall be revised accordingly.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Economic and Community Development ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of West Tennessee Community Planning Services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

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

Contractor Edison Registration ID # **Number**

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall produce the following: 1) a regional plan that considers the impacts to the entire twenty-one (21) county region to population, housing, water and sewer usage, land use, and rail usage and 2) individual plans for regions, counties, and/or cities as requested by the communities and the State that align with the regional plan. Regions are defined as Small Regions, up to three local government units, and Large Regions, up to four or more local government units.
- A.3. The regional plan is subject to State approval and the State and Contractor shall agree, in writing, on the scope, schedule and budget of the regional plan before work begins. The budget for the regional plan shall be based on the personnel hourly rates in Contract Section C.3.b..
- A.4. Upon the State's acceptance of the regional plan, the Contractor will work with the State to determine which communities can be served, what types of plans will be produced for each such community, and the budget for each plan. The budget for each plan shall be based on the personnel hourly rates in Contract Section C.3.b.. The State and Contractor shall agree, in writing, to an individual plan's scope, schedule and budget before work can begin on that individual plan.
All plans are to include research and data on the potential impacts of the Blue Oval City and potential suppliers to the communities, options for communities to prepare for such impacts, recommendations, and potential funding sources to implement any recommendation. The scope of each plan will be developed with the State, the Contractor, and the impacted communities. As each community is different, the Contractor will create each plan based on a community's specific needs, taking into consideration that some communities will already have plans that will need updates while other communities will need entirely new plans.
- A.5. All services shall be performed by properly licensed personnel, if necessary, and those licenses shall be provided upon request to the State. The Contractor is required to ensure that personnel maintain active licensure and adherence to professional standards.
- A.6. At the direction of the State, the Contractor shall perform the following services in creating the individual plans on behalf of the cities, counties, and regions, as required:
- a. Population growth, forecasting and modeling;

- b. Sewer or Water Utility planning studies and analysis at the local or regional level;
- c. Environmental assessment and reports;
- d. Conceptualized land use planning, design, imaging and rendering;
- e. Socio-economic data preparation and analysis;
- f. Project cost/benefit estimates, innovative finance and financial analysis and reports;
- g. Public participation/outreach;
- h. Other planning related professional services as required;
- i. Forecasting and modeling;
- j. Community planning related professional tasks as requested by the State;
- k. Online mapping and visualization tools using the Esri geographic information system (GIS), or similar platform for which the Contractor shall provide their own license for an GIS used in the performance of this contract.
- l. GIS analysis; and
- m. Graphics design.

The Contractor shall prepare up to 60 plans, as determined by the State, for communities and/or regions near the Blue Oval City that include some or all the plan components listed above; however, each plan shall include the following: options for development; recommendations; implementation steps; and potential funding sources including but not limited to grants and loan programs. The format of all plans will be agreed upon by the State and Contractor based on each community or region's needs.

- A.7. The Contractor shall conduct at least one in-person meeting (unless the State approves in writing that a virtual meeting is acceptable due to public health concerns) as directed by the State with each community to understand the community's needs for planning services. The meeting shall include local elected leaders, economic development professionals and other city or county leaders to determine the community leadership's goals, concerns, ideas and needs related to the plan(s) being developed. At the State's sole discretion, further meetings may be scheduled as needed.
- A.8. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

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

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

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

- A.9. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver

the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **November 14, 2022** (“Effective Date”) and ending on **October 31, 2027**, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Million Dollars (\$5,000,000.00) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

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

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

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

b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Maximum Per Hour Rate Year 1 (per compensable increment)	Maximum Per Hour Rate Year 2 (per compensable increment)	Maximum Per Hour Rate Year 3 (per compensable increment)	Maximum Per Hour Rate Year 4 (per compensable increment)	Maximum Per Hour Rate Year 5 (per compensable increment)
Project Director/QA-QC Advisor	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Project Manager	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Senior Planner	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Planner	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Senior Engineer	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Computer Programmer/Analyst	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER

Goods or Services Description	Maximum Per Hour Rate Year 1 (per compensable increment)	Maximum Per Hour Rate Year 2 (per compensable increment)	Maximum Per Hour Rate Year 3 (per compensable increment)	Maximum Per Hour Rate Year 4 (per compensable increment)	Maximum Per Hour Rate Year 5 (per compensable increment)
GIS Technician	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Graphics Designer/Marketing	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Clerical Support	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Nonprofessional Laborer	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Grant Writer	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Economic Modeler	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Economist	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Logistics Supply Chain Specialist	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Survey Specialist	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER
Other personnel	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER	\$NUMBER

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

ECD.Invoices@tn.gov

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Economic and Community Development, Rural Development Division;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;

- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

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

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

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

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

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

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

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

The State:

Brooxie Carlton, Assistant Commissioner
 Department of Economic and Community Development
 312 Rosa L Parks Ave, 27th Floor
 Nashville, TN 37243
 Brooxie.carlton@tn.gov
 Telephone # 615-336-2481

The Contractor:

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

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for

compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the

State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member’s retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor’s performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties’ agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor’s duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- 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 and B;
 - 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.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence

that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

a. Commercial General Liability ("CGL") Insurance

- i. 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

- i. 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:
 - 1. 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;
 - 2. 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
 - 3. 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.
- ii. 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
- iii. 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.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

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

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

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

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFQ 33006-30022 (RFQ Attachment B) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. § 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).
- E.4. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
- (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options; and
 - (4) Any additional information requested by the State.

- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.
- E.5. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.6. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.7. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

STUART C. MCWHORTER, COMMISSIONER

DATE

Pro Forma ATTACHMENT A**(Fill out only by selected Contractor)****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON SUPPLIER IDENTIFICATION NUMBER	

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY**DATE OF ATTESTATION**

Pro Forma ATTACHMENT B**(Fill out only by selected Contractor)**

SAMPLE LETTER OF DIVERSITY COMMITMENT

(Company Letterhead/Logo)

(Address)

(Date)

(Salutation),

(Company Name) is committed to achieving or surpassing a goal of **(numeral)** percent spend with certified diversity business enterprise firms on State of Tennessee contract # **(Edison document #)**. Diversity businesses are defined as those that are owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of **(percentage)** participation on the **(Contract)** by using the following diversity businesses:

- (i) Name and ownership characteristics (i.e., ethnicity, gender, service-disabled veteran, or disability) of anticipated diversity subcontractors and suppliers:

- (ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):

_____ %.

- (iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

- Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small businesses.
- Reporting monthly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small business accomplished under contract # **(Edison number)**.

(Company Name) is committed to working with the Go-DBE office to accomplish this goal.

Regards,

(Company authority – signature and title)