



STATE OF TENNESSEE
PROCUREMENT COMMISSION
 3rd Floor, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue
 Nashville, Tennessee 37243-1102
 (615) 741-1035 Fax (615) 741-0684

- AGENDA -

PROCUREMENT COMMISSION MEETING #011
THURSDAY, MAY 15, 2014 – 2:00 P.M.
LEGISLATIVE PLAZA – ROOM 29

Agenda Item	Page #
I. Call to Order	--
II. Approval of Minutes from March 20, 2014 Meeting..... (see attached documentation)	1
New Business:	
III. Proposed changes to the following Central Procurement Office documents (see attached documentation):	
(1) Request for Proposals (RFP) Standard Template and Request for Qualifications (RFQ) Template, Section B.15	6
(2) Request for Proposals (RFP) Amendment Template	8
(3) Interagency Agreement (IA) Model	12
(4) Grant Management and Subrecipient Monitoring Policy and Procedures	21
(5) HIPAA Compliance Term.....	32
(6) HIPAA Business Associate Agreement (BAA) Model.....	34
(7) Section 5.11.2 of the <i>Procurement Procedures Manual of the Central Procurement Office</i>	46
(8) Debarment and Suspension changes to:	48
<ul style="list-style-type: none"> • <i>Sections 4, 8, and 8.4 of the Procurement Procedures Manual of the Central Procurement Office</i> • Request for Proposals (RFP) and Request for Qualifications (RFQ) templates, and Edison Document Configurator • All applicable contracts and grants models and templates 	

LARRY B. MARTIN, Chairman
 Commissioner of Finance & Administration

JUSTIN P. WILSON
 Comptroller of the Treasury

ROBERT E. OGLESBY
 Commissioner of General Services

MICHAEL F. PERRY
 Chief Procurement Officer

Agenda Item		Page #
Reports:		
IV.	Certification Related Items (see attached documentation).....	56
	Correction of Errors Report (see attached documentation).....	61
V.	Other Business	--
VI.	Adjournment	--

MINUTES OF MARCH 20, 2014 MEETING



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

BILL HASLAM
GOVERNOR

ROBERT E. OGLESBY, AIA
COMMISSIONER

MINUTES
PROCUREMENT COMMISSION MEETING #010
THURSDAY, MARCH 20, 2014 – 11:00 A.M.
LEGISLATIVE PLAZA - ROOM 29

Members in Attendance:

Justin P. Wilson, Comptroller of the Treasury; Robert E. Oglesby, Commissioner of the Department of General Services; and Mike Perry, Chief Procurement Officer.

Others in Attendance:

Kaci Stewart, Hannah Terry, Eric Kohler, Mary Hall, Sandra Kizer, Jamil Moore, Shannon Howell, Toni Stuart, Mark Naftel, Jenny Young, Colleen Mallea, Jessica Starling, Shelia Simpson, Claire Harris, Tony Bybee, Melinda Parton, Kevin Bartels, Buddy Lea, Shay Oliphant, Bryan Chriske.

I. Call to Order.

In the absence of Commissioner Martin, Procurement Commission Chair, Comptroller Wilson, Procurement Commission Vice Chair, noted that a quorum of members was present and called the meeting to order. Comptroller Wilson noted that Commissioner Martin was unable to attend, but had specifically authorized the Procurement Commission to proceed in his absence in accordance with the Procurement Commission Bylaws and Rules of Procedure.

II. Minutes from the February 20, 2014 Procurement Commission Meeting.

Comptroller Wilson presented the February 20, 2014 minutes stating they appeared to be in order and asked for any comments or questions. Seeing none, Comptroller Wilson made a motion to approve the minutes from February 20, 2014 as presented. The motion was seconded by Commissioner Oglesby, whereupon the minutes from February 20, 2014 were approved.

III. Proposed changes to the following Central Procurement Office documents:

- (1) Business Conduct and Ethics Policy and Procedures

Chief Procurement Officer Perry stated that the Procurement Commission previously approved a Business Conduct and Ethics Policy and Procedures (“Policy”) for the Central

CENTRAL PROCUREMENT OFFICE

312 ROSA L. PARKS AVENUE, 3RD FLOOR • NASHVILLE, TENNESSEE 37243
(615) 741-1035 • FAX: (615) 741-0684 • WWW.TN.GOV/GENERALSERV/

Procurement Office which has been in effect for several months. The proposed change to the Policy will add an additional section to cover organizational conflicts of interest. In many ways the Central Procurement Office (“CPO”) Policy mirrors the policy that was adopted by the State Building Commission and allows the CPO to identify and mitigate any actual organizational conflicts of interest. Chief Procurement Officer Perry then stated that CPO staff were present and would be happy to answer any specific questions about the Policy. Chief Procurement Officer Perry indicated that the proposed change to the Policy was a collaborative effort between members of the Advisory Council Subcommittee, representatives of the Comptroller’s Office, Department of Finance and Administration, and the Central Procurement Office. Chief Procurement Officer Perry stated that he believed this was a good, healthy policy that will guide the state in its day-to-day operations.

Comptroller Wilson thought it would be appropriate to give an example of an organizational conflict of interest. He stated that when you visit a doctor because a shoulder is hurting, that doctor’s office would have an organizational conflict of interest if that office was involved in providing the treatment. Comptroller Wilson asked for verification that this Policy specifically requires documentation in the cases that there is a determination that waiver is in the state’s best interest. Chief Procurement Officer Perry confirmed that Comptroller Wilson was correct and stated that all Central Procurement Office personnel with Procurement or Contract Administration roles must complete an annual conflict of interest and confidentiality attestation. Chief Procurement Officer Perry then gave some examples of the myriad of conflict of interest situations that this Policy would address.

Comptroller Wilson asked if the proposed Policy had been reviewed by the Advisory Council Subcommittee (“Subcommittee”). Chief Procurement Officer Perry stated that the proposed Policy had been reviewed by the Subcommittee and was recommended for Procurement Commission approval at the last meeting of the Advisory Council. Comptroller Wilson asked if there were any comments made of which the Procurement Commission should be aware. Chief Procurement Officer Perry stated there were none and explained that the Subcommittee and other staff involved had spent many hours developing this Policy and that it had been taken very seriously. Chief Procurement Officer Perry stated that this Policy, like all others, would be brought back to the Advisory Council and Procurement Commission with any needed changes that might be necessary in the future. Comptroller Wilson asked if there were any further questions. Commissioner Oglesby stated that he had no questions and noted that it was very appropriate for the government to be transparent and for the taxpayers to have confidence in the ethics and standards that are in place as work is performed. Commissioner Oglesby made a motion to approve the Business Conduct and Ethics Policy and Procedures as presented. The motion was seconded by Comptroller Wilson, whereupon the Business Conduct and Ethics Policy and Procedures were approved.

IV. Proposed “TRICOR Purchasing Procedures Manual Business and Program Support Policy 311.01”.

Chief Procurement Officer Perry presented the TRICOR Purchasing Procedures Manual Business and Program Support Policy 311.01 ("TRICOR Manual") and stated that these policies and procedures were to govern the procurement process utilized by TRICOR. Chief Procurement Officer Perry explained that the TRICOR Manual had been deferred from a previous Procurement Commission meeting and the effective date on the current TRICOR Manual had been extended until March 31, 2014 to allow more time for a thorough updating of the document. Comptroller Wilson asked if a template had been developed to provide guidance to the agencies that would need to present procurement procedures before the Procurement Commission. Chief Procurement Officer Perry stated that there were several entities that would periodically need to come before the Procurement Commission with procurement procedures, so CPO staff has developed a guideline, or template, to help those agencies. Comptroller Wilson asked if there were any further questions or comments. Seeing none, Comptroller Wilson made a motion to approve the proposed TRICOR Purchasing Procedures Manual Business and Program Support Policy 311.01. The motion was seconded by Commissioner Oglesby, whereupon the proposed TRICOR Purchasing Procedures Manual Business and Program Support Policy 311.01 was approved.

V. Limitation of Liability Report.

Chief Procurement Officer Perry presented the Limitation of Liability report and stated that the report requires no action by the Procurement Commission, but is simply for information purposes. In addition, the Procurement Commission Staff are working to determine what other reports may be of value to present to the Procurement Commission. Chief Procurement Officer Perry stated that the standard limitation of liability is two times the value of the contract so any deviation below or above that amount requires additional approvals by the Comptroller and the Central Procurement Office. If the limitation of liability amount is above that threshold it also requires approval from the Commissioner of the Department of Finance and Administration. The report that was presented listed those contracts that have recently been through that process and have been approved. Seeing no questions or comments, Comptroller Wilson noted that the Limitation of Liability report was accepted as presented.

VI. Other Business.

Status of Grant Management and Subrecipient Monitoring Policy and Procedures.

Chief Procurement Officer Perry provided an update on the status of the Grant Management and Subrecipient Monitoring Policy and Procedures ("Grant Management Policy"). The Grant Management Policy was deferred from the February 20, 2014 Procurement Commission meeting because of new information that had been received by the Central Procurement Office. The Grant Management Policy was sent back through the Advisory Council Subcommittee review process and was scheduled to go before the full Advisory Council at its April meeting. If all goes well, the Grant Management Policy was expected to be before the Procurement Commission for approval in May. Comptroller Wilson asked if there were any questions or comments regarding the Grant Management Policy and there were none.

Comptroller Wilson asked if there were any further items to come before the Procurement Commission. Chief Procurement Officer Perry stated that the March Advisory Council meeting was streamed and future meetings would continue to be streamed whenever possible. The CPO discovered that there were meeting rooms available in the WRS Tennessee Tower that could provide streaming video. Costs for streaming services in the WRS Tennessee Tower are approximately \$75 an hour versus approximately \$700 for streaming services in Legislative Plaza. Chief Procurement Officer Perry stated that in the future it may be more cost effective to hold meetings in the WRS Tennessee Tower. Chief Procurement Officer Perry stated that live streaming of meetings is a good practice to continue in the interest of transparency and the public's right to know about the State business that is being conducted. Commissioner Oglesby clarified that the amount quoted by Chief Procurement Officer Perry for the cost of streaming in Legislative Plaza was for a multi-hour block of time, so it would not be a direct comparable hour-to-hour cost.

Comptroller Wilson reiterated that the Procurement Commission would not meet without express consent from any member who cannot be present and that consent was given by Commissioner Martin to proceed with the March 20, 2014 meeting.

VII. Adjournment.

A motion was made by Comptroller Wilson to adjourn, which was seconded by Commissioner Oglesby; whereupon the March 20, 2014 Procurement Commission Meeting was adjourned.

**PROPOSED REVISIONS TO:
REQUEST FOR PROPOSALS (RFP)
STANDARD TEMPLATE AND
REQUEST FOR QUALIFICATIONS
(RFQ) TEMPLATE,
SECTION B.15**

Request: Delete and Replace RFP-Standard Template Attachment 6.2., Section B.15. and RFQ Attachment B, Section B.15. with the following:

	<p>B.15. Provide documentation of the Respondent's commitment to diversity as represented by the following:</p> <p>(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, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information:</p> <ul style="list-style-type: none"> (i) contract description and total value; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); (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, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. 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.e., ethnicity, gender, Tennessee service-disabled veterans) 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=9265 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, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
--	--

PROPOSED REVISIONS TO:

**REQUEST FOR PROPOSALS (RFP)
AMENDMENT TEMPLATE**

REQUEST FOR PROPOSAL (RFP) AMENDMENT TEMPLATE

This template prescribes the format and content for a RFP amendment and should be utilized when submitting the State's official, written responses to Respondents after the RFP release date. Note: any State RFP clarification, addenda, Schedule of Events change or official response to questions constitutes an RFP Amendment. Documents of this type must adhere to this template with revisions only as instructions permit. A Rule Exception is required unless the deviation is immaterial; however, even immaterial deviations are subject to disapproval.

Procurement professionals should complete template fields and follow, replace, or otherwise address red instructional text (e.g., State Agency Name, amount, will/will not) as indicated and with conforming font and color. Draft the document using the applicable optional sections available in the RFP Amendment Template, which begins after the additional instructional text below:

1. **RFP Schedule of Events.** Each amendment must include a RFP Schedule of Events that either updates or confirms all scheduled dates. Insert the RFP Schedule of Events from the last release of the RFP, as amended and add, delete, or modify the Schedule of Events as appropriate. Please refer to the RFP Template for the recommended minimum amount of time between events. Consider whether the RFP Amendment warrants an extension of the Response Deadline to ensure adequate time for Respondents to respond.
2. **The State's Responses to Written "Questions & Comments".** Delete this section (appropriately renumbering any subsequent sections) if this amendment will not include Respondents' questions and comments and the State's responses.
In the Question/Comment column, copy the question or comment received by the State. In the State Response column, the CPO will assume that the proposed State responses have been vetted by Agency leadership or Counsel, as appropriate.
3. **New RFP Release.** Delete this section (appropriately renumbering any subsequent sections) if the amendment will not attach a completely new RFP Release.
This section offers a RFP amendment option for instances where publishing a new RFP release may make it easier for Respondents to understand the changes made. Draft a new RFP Release to emphasize ALL revisions from the replaced RFP as indicated by the template text.
4. **Delete and Replace Section(s).** Delete this section (appropriately renumbering any subsequent sections) if the amendment will attach a completely new RFP Release or if this section is otherwise not applicable. Repeat the template text for this section as needed for each individual RFP section deletion.
5. **Add Section(s).** Delete this section (appropriately renumbering any subsequent sections) if the amendment will attach a completely new RFP Release or if this section is otherwise not applicable. Repeat the template text for this section as needed for each individual RFP section addition.
6. **RFP Amendment Effective Date.** Each amendment must include an RFP Amendment Effective Date as the last section. Renumber as appropriate.

APPROVAL, PUBLICATION & NOTICE INSTRUCTIONS

1. **Approval.** Each RFP amendment must be approved for release by the Central Procurement Office (CPO) and the Comptroller of the Treasury, if those approvals were required on the original RFP.
2. **Publication.** Once an amendment is approved, e-mail one business day before the RFP amendment release date: a final copy of the amendment ready to be published online (typically presented as one (1), PDF format, digital file) to the Central Procurement Office (CPO); and send a copy to the Comptroller's office.
3. **Notice.** On the release date of an approved RFP amendment, send a notice of the RFP Amendment to all Respondents that submitted a Notice of Intent to Respond.



STATE OF TENNESSEE
STATE AGENCY NAME

**REQUEST FOR PROPOSALS # NUMBER
AMENDMENT # NUMBER
FOR GOODS OR SERVICES CAPTION**

DATE: RFP AMENDMENT RELEASE DATE

RFP # NUMBER IS AMENDED AS FOLLOWS:

1. This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.

INSERT RFP SCHEDULE OF EVENTS

2. State responses to questions and comments in the table below amend and clarify this RFP.

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

QUESTION / COMMENT	STATE RESPONSE
1	
2	

3. Delete RFP # _____, in its entirety, and replace it with RFP # _____, Release # _____, attached to this amendment. Revisions of the original RFP document are emphasized within the new release. Any sentence or paragraph containing revised or new text is highlighted.

4. Delete RFP section _____ in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

5. Add the following as RFP section _____ and renumber any subsequent sections as necessary:

6. **RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.

PROPOSED REVISIONS TO:

INTERAGENCY AGREEMENT (IA)
MODEL

INTERAGENCY AGREEMENT (IA) MODEL

This model replaces and supersedes the ID, ID-NC, and ED Models and provides format and content for drafting an interagency agreement between TN state agencies, including the University of Tennessee and Board of Regents colleges and universities. The use of this model is optional and serves as a guide. This model should **ONLY** be utilized between two (2) agencies of the State, where neither State Agency has the independent capacity to contract or sue or be sued and should **NOT** be used where the funding source is a grant. Questions regarding whether this model should be used should be directed to the Central Procurement Office. Please also refer to Department of Finance and Administration – Policy 18 “Interunit Journals” for additional information, as applicable.

Complete model fields and follow, replace, or otherwise address red instructional text (e.g., State Agency Name, amount, will/will not) as indicated and with conforming font and color.

SUMMARY SHEET

Complete summary sheet fields as indicated within the model. A summary sheet properly completed and in accordance with the model is required for every copy of the Interagency Agreement.

Agency Tracking # a unique number comprised of: 5-digit business unit # + unique, 5-digit #
example: 31707-12345

Funding amounts by fiscal year & funding source and with row & column totals;
the sum of the TOTAL Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the agreement maximum liability

PREAMBLE

Add additional information only if necessary.

A. SCOPE OF SERVICES

Describe all of the duties of each party to the agreement. Draft the specification of goods or scope of services to clearly, specifically, and definitively detail State Agency duties, responsibilities, and associated performance requirements and describe, in detail, the service and deliverable requirements and all related specifications. The specification of goods or scope of services section should not include any payment terms.

It is the responsibility of the Procuring State Agency to adequately draft specifications of goods or a scope of services, and oversight examiners will rely on the contracting agency head’s signature on the Interagency Agreement as certification and assurance that the proposed specification of goods or scope of services is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contracting State Agency accountability and results.

Option: Incorporation of Additional Documents

A.#. Incorporation of Additional Documents. Each of the following documents is included as a part of this Interagency Agreement by reference or attachment. In the event of a discrepancy or ambiguity regarding the Contracting State Agency's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.

- a. this Interagency Agreement document with any attachments or exhibits (excluding the items listed at subsections below);
- b. Add text as appropriate

B. AGREEMENT PERIOD

Draft the agreement with an appropriate, definitive, and complete term of agreement with a commencement date and a termination date. **Do NOT route an agreement for approval after the commencement date.**

Option: Term Extension

To reserve the right to extend the agreement period beyond the original period, change the designation of the paragraph under B. to B.1., and add the following section:

B.2. Term Extension. The Procuring State Agency reserves the right to extend this Agreement for an additional period or periods of time. If a term extension necessitates additional funding beyond that which was included in the original Agreement, an increase of the Procuring State Agency's maximum liability will also be effected through an amendment to this Interagency Agreement.

C. PAYMENT TERMS AND CONDITIONS

Revise Payment Terms and Conditions sections as needed.

Payment Methodology

The default payment methodology used in the model provides for unit, milestone & temporal rate payments.

Requirement: *Pro Rata* Payments

If temporal payment rates result in payment for service periods greater than an hour (*e.g.*, daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

- d. A "day" shall be defined as a minimum of eight (8) hours of service. If the State Agency provides fewer than eight (8) hours of service in a standard twenty-four (24) hour day, the Contracting State Agency shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contracting State Agency shall not bill more than the daily rate even if the Contracting State Agency works more than eight hours in a day.

Option: Rate Escalation

Replace C.3.b. with the following if specific rate escalation during the term of agreement is appropriate.

b. The Contracting State Agency shall be compensated based upon the following payment rates:

(1) For service performed from Date, through Date, the following rates shall apply:

Service Description	Amount (per compensable increment)
Milestone	\$ Number
Service Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

(2) For service performed from Date, through Date, the Contracting State Agency shall be compensated based upon the Contracting State Agency’s actual cost of providing goods or services, subject to review and verification by the Procuring State Agency.

Repeat Previous Subsection for Each Subsequent Agreement Period

Option: Payment Upon Completion

Replace sections in the model with the following sections, respectively, if one, lump sum payment after completion of all work under the Agreement is appropriate.

C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Agreement exceed Written Dollar Amount (\$Number). This amount shall constitute the entire compensation due the Contracting State Agency for all goods delivered and accepted or services completed and the Contracting State Agency obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. This Agreement amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contracting State Agency.

C.2. Compensation Firm. The maximum liability of the Procuring State Agency under this Agreement is firm for the duration of the term of this Agreement and is not subject to escalation for any reason unless amended.

C.3. Payment Methodology. Upon completion of the work described in section A of this Agreement, the Contracting State Agency shall be compensated Written Dollar Amount (\$Number).

C.4. Travel Compensation. The Contracting State Agency shall be compensated or reimbursed for the indirect costs it incurs, e.g., travel, meals, or lodging, related to providing goods or services to the Procuring State Agency under this Agreement.

Option: No Cost

C.1. There shall be no cost to the Procuring State Agency for the performance of services under this Agreement.

D. STANDARD TERMS AND CONDITIONS

Add additional terms and conditions as needed and as recommended by the agencies' legal counsel.

**INTERAGENCY AGREEMENT BETWEEN THE STATE OF TENNESSEE
PROCURING STATE AGENCY'S NAME & CONTRACTING STATE AGENCY'S NAME**

This Interagency Agreement ("Agreement"), by and between the State of Tennessee, Procuring State Agency Name hereinafter referred to as the "Procuring State Agency" and Contracting State Agency, hereinafter referred to as the "Contracting State Agency," is for the provision of Scope of Service Caption, as further defined in the "Scope of Services."

A. SCOPE OF SERVICES:

- A.1. The Contracting State Agency shall provide all goods, services or deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Agreement.
- A.#. Specify the goods, services, deliverables, technical specifications, & delivery requirements that the Contracting State Agency must provide & meet (sufficient detail is required to ensure Contracting State Agency accountability & definitive results).

B. AGREEMENT PERIOD:

This Agreement is effective for the period commencing Date, and ending on Date. The Contracting State Agency hereby acknowledges and affirms that the Procuring State Agency shall have no obligation for goods or services rendered by the Contracting State Agency that were not delivered and accepted or performed within this specified Agreement period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Agreement exceed Written Dollar Amount (\$Number). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4 shall constitute the entire compensation due the Contracting State Agency for the goods delivered and accepted or for services performed and all of the Contracting State Agency's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contracting State Agency.
- C.2. Compensation Firm. The payment rates and the maximum liability of the Procuring State Agency under this Agreement are firm for the duration of the Agreement and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contracting State Agency shall be compensated based on the payment rates herein for goods delivered and accepted or for units of service authorized by the Procuring State Agency in a total amount not to exceed the Agreement Maximum Liability established in section C.1.
- a. The Contracting State Agency's compensation shall be contingent upon the delivery and acceptance of goods that conform to specifications or the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contracting State Agency shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Milestone	\$ Number
Service Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

Add Contingently Required Subsections as Appropriate (refer to instructions for details)

- C.4. Travel Compensation. Compensation to the Contracting State Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. Additional Travel Compensation Restriction(s)

The Contracting State Agency must provide a complete itemization of travel compensation requested in accordance with and attach documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations."

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Procuring State Agency and the Contracting State Agency are not bound by this Agreement until it is signed by the agency head or the agency head's designee. Each agency's legal counsel shall review and approve the Agreement as to form and legality.
- D.2. Modification and Amendment. Any modifications, amendments, renewals or extensions shall be in writing, signed, and approved by all parties who signed and approved this Agreement.
- D.3. Termination for Convenience. This Agreement may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the Procuring State Agency exercise the option of terminating this Agreement for convenience, the Contracting State Agency shall be entitled to compensation for all goods delivered and accepted or satisfactory and authorized services completed as of the termination date. Should the Contracting State Agency exercise this provision, the Procuring State Agency shall have no liability to the Contracting State Agency except for those goods delivered and accepted or those units of service that were satisfactorily completed by the Contracting State Agency. The final decision as to the acceptability of goods or whether units of service were satisfactorily completed shall be determined by the Procuring State Agency in its sole discretion.
- D.4. Subject to Funds Availability. This Agreement is subject to the appropriation and availability of state and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Procuring State Agency reserves the right to terminate this Agreement upon written notice to the Contracting State Agency. Said termination shall not be deemed a breach of this Agreement by the Procuring State Agency. Upon receipt of the written notice, the Contracting State Agency shall cease all work associated with this Agreement. Should such an event occur, the Contracting State Agency shall be entitled to compensation for all satisfactory and goods delivered and accepted or authorized services completed as of the termination date. Upon such termination, the Contracting State Agency shall have no

right to recover from the Procuring State Agency any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.5. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to this subject matter, including all the terms and conditions of the parties' agreement. There are no other prior or contemporaneous agreements that modify, supplement, or contradict any of the express terms of the agreement.

D.6. Communications and Contacts. All instructions, notices, consents, demands, or other communications shall be made in writing and directed to the following designated contact persons:

The Procuring State Agency:
Procuring State Agency Contact Name & Title
Address
Email Address
Telephone # Number
FAX # Number

The Contracting State Agency:
Contracting State Agency Contact Name & Title
Address
Email Address
Telephone # Number
FAX # Number

IN WITNESS WHEREOF,

CONTRACTING STATE AGENCY'S SIGNATURE DATE

PRINTED NAME AND TITLE OF SIGNATORY (ABOVE)

Approved as to Form and Legality:

DATE

PROCURING STATE AGENCY SIGNATURE DATE

PRINTED NAME AND TITLE OF SIGNATORY (ABOVE)

Approved as to Form and Legality:

DATE

PROPOSED CHANGES TO:

POLICY NO. 2013-007:

**CENTRAL PROCUREMENT OFFICE
GRANT MANAGEMENT AND
SUBRECIPIENT MONITORING POLICY
AND PROCEDURES**

Policy Number 2013-007
Central Procurement Office
Grant Management and Subrecipient Monitoring Policy and Procedures

Effective: May 28, 2013
Last Amended: DATE
Prepared by: The Central Procurement Office of the State of Tennessee

1. Purpose.

To provide uniformity in the reporting of, and controls over, the expenditure of awards in connection with the delivery of services by subrecipients of federal and State awards.

To establish guidelines for subrecipient monitoring by Grantor State Agencies.

2. Scope.

These policies and procedures apply to all State agencies that award State or federal funds or non-cash assistance to subrecipients. Direct Appropriation Grants are exempt from the requirements of these policies and procedures.

3. Definitions.

For purposes of this policy, the following terms shall have the meanings described below:

“Award” - means any grant of money, loans, non-cash assistance, etc. awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law.

“Cognizant State Agency” - means the State Agency whose funds comprise the greatest percentage of Awards received by a subrecipient as determined by the Department of Finance and Administration (F&A) as defined in F&A Policy 3.

“Cost Allocation Plan” - means the method of distributing to various programs the costs which benefit more than one program and are not directly assigned as approved by the Department of Finance and Administration.

“Central Procurement Office” - means the Central Procurement Office of the State of Tennessee acting by and through the Chief Procurement Officer or his or her designee as the context requires.

“Direct Appropriation Grant” - means a grant listed on the Department of Finance and Administration Division of Budget’s annual direct appropriation list.

“Endowment Grant” - means a limited Grant Contract that originates from a specific appropriation, effecting an award and conveyance of funds or property to a Grantee for a particular purpose to benefit the general public as a whole or some population of the

general public. An Endowment Grant is used to transfer funds to a Grantee pursuant to an appropriation.

“Grant” - means any grant of money awarded to the State, or awarded by the State to a person or legal entity, for the furnishing by the State of assistance, whether financial or otherwise, to any person or entity to support a program authorized by law. The term “Grant” does not include an award with the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such an award that should otherwise be provided on a competitive basis.

“Grant Budget” - means a budget itemizing one or more specific activities or purposes under the grant and the maximum amounts a Grantee may be reimbursed.

“Grant Contract” – means a written contract between the federal government, the State, a Grantee, or a Subrecipient that contains the terms and conditions govern the parties duties and responsibilities with respect to an Award.

“Grantee” - means the person or entity receiving an Award.

“Grantor State Agency” - means a State Agency that provides an Award to a person or entity.

“State” - means the State of Tennessee and its agencies, boards and commissions as the context requires.

“Subrecipient” - means a non-federal entity that expends State or federal funds received from the State to carry out a State or federal program. Subrecipients may also include, by example only, natural persons, not-for-profit organizations, for-profit organizations, cities, municipalities, counties, authorities, the State and its agencies, boards, commissions, or private and public colleges and universities if they receive federal funds from a State department or agency.

“Vendor” - means a dealer, distributor, merchant, or other seller providing goods or services that are in support of project activities. These goods or services may be for an organization's own use or for the use of beneficiaries of a State or federal program.

4. Grantee Selection Process.

Competition is encouraged with all Grantee selections. If competition is not sought, the Grantor State Agency is required to justify the selection of the Grantee to the Central Procurement Office for approval on such forms as required by the Central Procurement Office.

5. Advance Payments.

It is recommended that all contracts generally provide that the State is only obligated to pay for goods received or services performed, which are acceptable to the State, prior to the date of the State's payment. However, in extraordinary circumstances, advance payments may be authorized if doing so is in the best interests of the State. Upon approval by the Chief Procurement Officer, a

grant contract may authorize a partial, periodic, or total advance payment; however, total advance payment should be avoided unless warranted by exceptional circumstances. The Grantor Agency must provide a written justification for any type of advance payment to the Chief Procurement Officer. All grant contracts with approved advance payments will also require approval of the Comptroller of the Treasury.

6. Cognizant Agency Determination Process.

The Cognizant State Agency shall be responsible for approval of the cost allocation plan of the Grantee State Agency. Other funding State Agencies, which also have funds at the Grantee State Agency, must abide by the methods of cost allocation approved by the Cognizant State Agency. Determination of the Cognizant State Agency shall be made by the Department of Finance and Administration. Once assigned, the term of responsibility shall be indefinite, although responsibility may be reassigned upon written request and justification to the Department of Finance and Administration by either the Cognizant State Agency or the Grantee State Agency.

7. Grant Budget/Cost Allocation Plan.

Allocation Plan requirements apply to subrecipients other than cities, counties (and subdivisions thereof), and state colleges universities and technology centers. Affected Subrecipients, include all legal entities, which includes without limitation, for profit entities and private not-for-profit entities that are subject to accounting and financial reporting standards promulgated by the Financial Accounting Standards Board (FASB). Allocation Plan requirements also apply to governmental not-for-profit entities that are subject to Governmental Accounting Standards Board (GASB) standards. Vendor contracts are exempt from this requirement.

Acceptable allocation methods to be used by Grantee shall be determined by the Cognizant State Agency. Methods used for allocating costs may differ between Grantees. Once a Grantee receives approval for its method of cost allocation, all other Grantor State Agencies shall accept the Grantee's program application. However, Grantor State Agencies are not required to fully fund the costs that are charged to a particular program under an allocation method if such costs are not allowable under the Grantor State Agency's agreement with the Grantee or exceed the prescribed funding percentage or budgets.

7.1 Types of Costs.

7.1.1. Direct costs.

Direct costs are those costs that can be identified to benefit a specific program. Such costs include:

- Salaries of persons who provide direct services to program beneficiaries and work on only one program (e.g. aging director, transportation program director);
- Travel costs that can be specifically identified to benefit a particular program;

- Equipment purchased for use in only one program;
- Maintenance or insurance for purchased equipment;
- Supplies which are utilized in only one program;
- A contract for professional services which benefits a single program; and
- Printing which benefits a single program.

7.1.2. *Allocable direct costs.*

Allocable direct costs are those that benefit more than one program, but do not fall under the criteria of administrative costs. Such costs include:

- Salaries and benefits of program employees whose work benefits more than one program (e.g. nurses, eligibility workers, etc.);
- Travel costs of employees whose work benefits more than one program;
- Occupancy costs of programs;
- Telephone costs of programs;
- Supplies utilized by more than one program;
- Rental and maintenance of equipment used by more than one program;
- Audit costs; and
- Contracted Services that benefit more than one program.

7.1.3. *Administrative costs.*

Administrative costs are those that benefit the operations of the entire entity, but cannot be identified to specific programs. Such costs include:

- Executive director's salary and benefits (or the administrative portion thereof if the executive director spends time on program-related activities);
- Fiscal Officer's salary and benefits;
- Secretarial support of administrative employees;
- Supplies of administrative employees;
- Travel of administrative employees;
- Occupancy costs (e.g. rent and utilities) of administrative employees;
- Postage and telephone costs of administrative employees; and

7.2 Liability Insurance.

7.2.1. *Allocation Methods.*

The periodic allocation of actual expenditures, rather than the use of a fixed or provisional indirect cost rate, is the most equitable method of cost allocation. The following are allowable methods to allocate administrative costs and allocable direct costs. Any exceptions to these methods must receive prior approval by the Cognizant State Agency.

Administrative costs allocable to programs should be accumulated in a separate cost pool. After allocating the administrative cost pool its share of the allocable

direct costs, the total should be periodically allocated to the programs based on the percentage of direct program salaries versus total direct salaries, applied to total administrative costs.

Administrative costs may also be allocated by using total costs to distribute administrative costs. The actual administrative costs are allocated to each program based on its percentage of total actual direct costs for the period after allocation of allocable direct costs.

Usually, the appropriate time for allocation of allocable direct costs is when they are recorded on the books. However, cost pools may be used for various categories of allocable direct costs for periodic allocation to programs and the administrative cost pool. Examples of acceptable methods for the allocation of allocable direct costs include:

- Salaries and Benefits – allocate on the basis of time records, records of the number of clients served, or other approved bases.
- Travel – allocate on the same basis as salaries and benefits.
- Occupancy costs for program areas – allocate based on the number of square feet occupied by the program area as a percentage of total square feet allocated to all program areas.
- Telephone costs – allocate based on the number of personnel, number of lines, or other equitable method for local service.
- Supplies – allocate based on the number of personnel per program, number of clients served, or other equitable method.
- Contracts for services benefitting more than one program – allocate based on the number of clients served or other equitable method.
- Equipment rental and maintenance – allocate based on usage logs or other equitable method.

7.2.2. Instructions for Cost Allocation Plans

Each subrecipient shall prepare a narrative describing in detail the methods used to allocate costs to the various programs. The plan should include an organizational chart and documents and schedules to support the allocation methods.

The following guidelines should be used when preparing the Cost Allocation Plan:

- The nature of the charges to be allocated will depend on the sophistication of the accounting system. The more sophisticated the system, the fewer the types of charges will be treated as allocable direct expense and included for distribution. For example, if each employee keeps a detailed time report, the payroll expenditures might be charged directly to each program, and cost allocation per se would not be involved.
- The cost allocation plan must include plans for allocation of allocable direct costs as well as administrative costs. Allocable direct costs will be included

with other direct costs of the program in reports to the grantor. Allocations that are reported in separate line items on the grantor reports should involve the administrative cost pool only. An entity may wish to have more than one cost allocation pool so that certain types of costs are allocated on different bases.

- All proposed cost allocation plans developed by the Grantee must be reviewed and approved by the entity's designated Cognizant State Agency.
- Once the cost allocation plan has been approved by the Cognizant State Agency, all other funding state agencies must accept the approved plans. Where a contracting state agency has reason to believe that special factors affecting its awards necessitate special consideration, the contracting State Agency should communicate this to the Cognizant State Agency.
- If a dispute arises between the Cognizant State Agency and a Grantor State Agency, the dispute shall be resolved through an appeals process headed by the Commissioner of the Department of Finance and Administration or his or her designee.

8. Subrecipient Contract Monitoring Plan - General Rule.

All State agencies affected by this Policy shall develop and submit an annual monitoring plan for review and approval to the Central Procurement Office annually by October 1.

The monitoring plan is a summary of the agency's planned monitoring activities for the current annual monitoring cycle and must include:

- The total subrecipient contract population;
- All subrecipient contracts to be monitored during the agency monitoring cycle;
- The identification of the agency monitoring cycle (e.g., the State or federal fiscal year);
- Sample monitoring guides to be utilized for each State or federal program;
- Full-time equivalents and personnel classifications for all staff dedicated to monitoring activities;
- A program description of each State or federal program to be monitored;
- A risk assessment for each subrecipient and its related contracts;
- An explanation of the criteria used to assign risk to subrecipients and their related contracts;
- A summary of the findings from the previous monitoring cycle; and
- An explanation of the agency's corrective action process.

Any changes to the agency monitoring plan following approval by the Central Procurement Office shall be documented by the agency and maintained with their approved plan. Changes to the population of contracts to be monitored should be well documented with an explanation accompanying the changes.

9. How to Distinguish Between a Subrecipient and a Vendor.

If it is determined that the grantee is a subrecipient, monitoring requirements set forth in this policy shall apply.

There may be unusual circumstances or exceptions to the characteristics of subrecipients and vendors. When determining whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all subrecipient characteristics will be present. Judgment should be used in determining whether a contract represents a subrecipient or a vendor relationship. If the contractual relationship with the State meets the vendor criteria, the State agency must ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and contract provisions.

Any entity meeting the subrecipient criteria will be subject to subrecipient contract monitoring. This includes private non-profit entities, for-profit entities, governmental entities, and State and local governments.

To distinguish a subrecipient from a vendor, the characteristics below from OMB Circular A-133, Section 210 should be considered.

9.1 *Subrecipient.*

9.1.1 *Subrecipient Characteristics.*

A subrecipient determines who is eligible to receive the State or Federal financial assistance available through the program that is administered:

- A subrecipient determines the means and methods for carrying out the State or Federal program.
- A subrecipient must fulfill the scope of work requirements.

A subrecipient has its performance measured against whether the objectives of the State or Federal program are met through methods such as, but not limited to:

- A subrecipient must meet performance goals.
- The State must monitor the subrecipient to ensure funds are properly expended.
- The subrecipient must submit periodic progress reports.

A subrecipient has responsibility for programmatic decision making :

- A subrecipient has the authority to make decisions within the terms of agreement.
- A subrecipient determines how to implement its program.
- A subrecipient determines the type of assistance to program beneficiaries.

A subrecipient has responsibility for adherence to applicable State or federal program compliance requirements:

- A subrecipient shall comply with applicable statutes, regulations, rules, and policies.
- The State shall monitor the subrecipient for compliance with

program requirements.

9.2 *Vendor*

9.2.1 Vendor's Characteristics

Vendor's characteristics include the following:

- The vendor provides goods or services to many different purchasers.

Goods or services are provided by the vendor in the normal course of business operations and where:

- The vendor controls the means and methods of how it will produce its goods and services.
- The vendor is not required to provide periodic or year-end reports.
- The vendor's performance is measured against whether it meets contract specifications, not whether it achieves a program's performance outcomes.

The vendor operates in a competitive environment, i.e., more than one vendor provides similar goods or services.

The vendor provides goods or services that are ancillary to the operation of a State or Federal program.

The vendor is not subject to compliance requirements of the State or Federal program, e.g., subrecipient monitoring.

10. **State Monitoring Requirements.**

All subrecipient grant contracts must be monitored by the Grantor State Agency at least once every three years. However, it is the Grantor State Agency's responsibility to monitor at a frequency required by the Federal Government. Additionally, more frequent monitoring should be conducted if there are findings from the previous monitoring efforts.

Subrecipient grant contracts with federal frequency monitoring requirements should be reviewed in accordance with such requirements.

Both State and federally funded subrecipient grant contracts shall be reviewed for compliance with the core monitoring areas listed in Section XI of this Policy. All applicable core monitoring areas must be addressed in each monitoring report.

Risk should be assigned to all subrecipients by the Grantor State Agency. At a minimum, the scope of a review must include the program-specific monitoring requirements and the core monitoring areas listed in Section XI of this Policy.

When the Grantor State Agency is selecting the population of grant contracts to be included

in the monitoring plan, the following should be considered:

- The level of programmatic or financial risk to the State;
- Whether the grant contract has been monitored in the past three years; and
- Whether the grant contract has had prior findings indicating serious deficiencies.

11. Core Monitoring Areas.

In addition to State or federal program specific monitoring requirements, all monitoring activities undertaken by any State agency should address the following areas:

- All applicable requirements of Title VI of the *Civil Rights Act of 1964*, as defined in the Title VI Compliance Commission Advisory Memorandum No. 3, April 14, 2004.
- The applicable core monitoring areas, as defined by OMB Circular No. A-133 Compliance Supplement. Currently, these core areas include: activities allowed or unallowed; allowable costs/cost principles; cash management; Davis-Bacon Act; eligibility; equipment and real property management; matching, level of effort, and earmarking; period of availability of funds; procurement, suspension and debarment; program income; real property acquisition and relocation assistance; reporting and special tests and provisions.

12. Exception.

Pursuant to Tenn. Code Ann. §§ 42-3-114 and 42-2-203, the Tennessee Department of Transportation (TDOT) may accept and expend transit and aviation grant dollars according to the terms and conditions as prescribed by the federal government.

The federal government permits grantees to incur preliminary incidental costs prior to the grant start date. For such TDOT subrecipient grants, preliminary incidental costs incurred by the grantee may be reimbursed.

Other exceptions to this policy may also be set forth in applicable Federal or State law.

13. Reporting Requirements.

Grantor State agencies shall issue reports summarizing any findings or observations identified during monitoring reviews within 30 business days of completing all field work. Reports shall be distributed to the subrecipient entity and the Comptroller of the Treasury, Division of State Audit. The State agency shall retain a copy of the report.

Upon receipt of a monitoring report with findings, the subrecipient shall prepare a corrective action plan detailing the actions to be taken to correct such findings. The corrective action plan shall include:

- The name of the contact person responsible for the corrective action plan;
- The corrective actions to be taken; and
- The anticipated completion date.

The corrective action plan shall be submitted to the Grantor State Agency for review and approval. It is the responsibility of the Grantor State Agency to notify the subrecipient, in a timely manner, of the approval or rejection of the corrective action plan. If a corrective action plan is not approved, the State Agency and the subrecipient shall work together to develop solutions for correcting the monitoring report findings.

14. Compliance Reviews.

Agency records obtained pursuant to this Policy shall be subject to evaluation by the Chief Procurement Officer or the Comptroller of the Treasury, or their duly appointed representatives.

Related Statutes, Rules and Policies

Tenn. Code Ann. §§ 4-56-101, *et seq.*

Tenn. Code Ann. §§ 12-3-101, *et seq.*

Tenn. Code Ann. §§ 12-4-101, *et seq.*

PROPOSED

HIPAA COMPLIANCE TERM

REQUEST: Replace the “HIPAA Compliance” term currently included as an optional special term and condition with the following as a standard term and condition in all applicable contract templates. Add the “HIPAA Compliance” term to the document configurator in Edison.

- D.#. 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”).
- 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 such information without entering into a business associate agreement or signing another such document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

PROPOSED

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA) MODEL

HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA) MODEL

A Business Associate Agreement should be completed when required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations. The use of this model is optional and serves as a guide. Add, delete, or revise information in the model as needed.

**HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, STATE AGENCY NAME** (hereinafter "Covered Entity") and **BUSINESS ASSOCIATE NAME** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

Parties acknowledges that they are subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

Business Associate provides services to Covered Entity pursuant to one or more contractual relationships detailed below and hereinafter referred to as "Service Contracts."

LIST OF AGREEMENTS AFFECTED BY THIS BUSINESS ASSOCIATE AGREEMENT:

LIST OF CONTRACTS AFFECTED BY HIPAA REQUIREMENTS OR NOT APPLICABLE

Contract Name:

Execution Date:

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Contract(s) are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, make this Agreement.

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.501 and 164.504.

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Care Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.

- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 160.304.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement

between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.
- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
- 2.7.1 Business Associate shall provide to Covered Entity notice of a Provisional or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.
- 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
- 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.

- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].
- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity

- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

- 3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.
- 3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.
- 3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. Business Associate shall promptly report any Security Incident of which it becomes aware to Covered Entity.
- 3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.

- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

COVERED ENTITY NAME
NAME AND TITLE
ADDRESS
 Telephone: **NUMBER**
 Fax: **NUMBER**

- 3.8 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

Business Associate shall notify Covered Entity of any change in the key contact during the term of this Agreement in writing within ten (10) business days.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy Rule or Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes

aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.

- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

- 5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.
- 5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.
- 5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

7. TERM AND TERMINATION

- 7.1 Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, Section 7.3. below shall apply.
- 7.2 Termination for Cause.

- 7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.
- 7.2.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
- 7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or
 - 7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.
 - 7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

- 7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

8. MISCELLANEOUS

- 8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.
- 8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity.
- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the

Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.
- 8.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:

**ENTITY NAME
NAME AND TITLE
ADDRESS
Telephone: NUMBER
Fax: NUMBER**

BUSINESS ASSOCIATE:

**ENTITY NAME
NAME AND TITLE
ADDRESS
Telephone: NUMBER
Fax: NUMBER**

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 8.7 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement
- 8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such

provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.

8.10 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.

8.11 Security Breach. A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

COVERED ENTITY LEGAL ENTITY NAME:

NAME AND TITLE

Date:

BUSINESS ASSOCIATE LEGAL ENTITY NAME:

NAME AND TITLE

Date:

PROPOSED CHANGES TO:

**SECTION 5.11.2 OF THE *PROCUREMENT
PROCEDURES MANUAL OF THE
CENTRAL PROCUREMENT OFFICE***

REQUEST: Revise section 5.11.2 of the *Procurement Procedures Manual of the Central Procurement Office* to more accurately reflect the intent of Department of General Services Central Procurement Office rule 0690-03-01.12 to remove written notice requirement to “non-responsive” respondents prior to the Open File Period.

5.11.2. *Determine status – Responsiveness and Responsibility.*

The solicitation coordinator, in consult with the evaluation committee if applicable, should determine whether each response is “responsive” or “non-responsive.” A response that is “responsive” is one that conforms in all material respects to the solicitation and meets all mandatory requirements. A response may be deemed “non-responsive” if any of the required information is not provided, the submitted price is found to be excessive or inadequate as measured by criteria stated in the solicitation, or the response is clearly not within the scope of work or specifications described and required in the solicitation. The solicitation coordinator should exercise extreme care when making this determination because of the time and cost that a potential respondent has put into submitting a response and the fact that competition strengthens the results of a given procurement.

Responses capable of being determined responsive through clarification should not be deemed non-responsive. If a response is determined to be “non-responsive,” the solicitation coordinator will document the justification for this determination. If a response fails to address one or more solicitation mandatory requirements or responds to them incompletely, the response should not be evaluated unless these areas can be clarified by the respondent. Documentation of any decision to bypass or determine a response “non-responsive” should be included in the procurement file. All respondents are deemed to know all facts documented in the State’s procurement files on the first day of the open file period.

**PROPOSED DEBARMENT AND SUSPENSION
CHANGES TO:**

- **SECTIONS 4, 8, AND 8.4 OF THE *PROCUREMENT PROCEDURES MANUAL OF THE CENTRAL PROCUREMENT OFFICE***
- **REQUEST FOR PROPOSALS (RFP) AND REQUEST FOR QUALIFICATIONS (RFQ) TEMPLATES AND EDISON DOCUMENT CONFIGURATOR**
- **ALL APPLICABLE CONTRACTS AND GRANTS MODELS AND TEMPLATES**

REQUEST: Revise the *Procurement Procedures Manual of the Central Procurement Office* by adding new definitions to section 4., "Definitions, Abbreviations and Codes" and re-title Chapter 8 to "Protest, Stay of Award and Debarment and Suspension." Add a new section 8.4. related to Debarments and Suspensions and re-number subsequent sections accordingly.

4. Definitions, Abbreviations and Codes.

"Debarment" means excluding a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, as specified by the Chief Procurement Officer.

"Suspension" means a temporary or limited exclusion of a Respondent or Vendor from participation in State procurements or contracts as a Respondent, contractor or subcontractor, pending completion of a State investigation or administrative or judicial proceedings, as specified by the Chief Procurement Officer.

8.4 Debarment and Suspension.

8.4.1. Statement of Policy and Purpose.

It is the policy of the Central Procurement Office to solicit responses from Respondents who are responsive and responsible and contract with vendors who conduct their business with high ethical standards. Debarments or Suspensions may be imposed at the discretion of the Chief Procurement Officer in order to maintain the integrity of the procurement and contract management processes and to ensure public trust and confidence in the operations of the State. If a Respondent or a Vendor is debarred or suspended, the Respondent or Vendor is debarred or suspended from procurements with the State or its Agencies under the Central Procurement Office's authority, as specified by the Chief Procurement Officer. Notwithstanding the foregoing, the existence of a cause for debarment does not necessarily require that the Respondent or Vendor should be debarred or suspended. The seriousness of the Respondent's or Vendor's acts or omissions and any remedial measures or mitigating factors should be considered by the Chief Procurement Officer in making any debarment or suspension decision.

8.4.2. Grounds for Debarment or Suspension.

A Respondent or a Vendor may be debarred or suspended if the Respondent or Vendor:

- Is presently debarred, suspended, proposed for debarment, or voluntarily excluded from participation in solicitations conducted by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- Within a three (3) year period preceding the contract, has been convicted of, or had a civil judgment rendered against the Respondent or Vendor, from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public 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;

- Is presently indicted or otherwise criminally or civilly charged by a government entity with commission of any of the offenses detailed above; and has within a three (3) year period preceding the contract had one or more public transactions terminated for cause or default;
- Has been awarded a contract pursuant to a public procurement, but has repudiated the award made by the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government;
- Has willfully breached any contract with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government; or
- Has exhibited a history or pattern of failure to perform, or of unsatisfactory performance of one or more contracts with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.3. *Debarment or Suspension Considerations.*

Before arriving at any debarment or suspension decision, the Chief Procurement Officer should consider factors such as the following:

- Whether the Respondent or Vendor had effective standards of conduct and internal control systems in place at the time of the activity which gave rise to debarment or suspension or had adopted such procedures prior to any investigation of the activity cited as a cause for debarment or suspension.
- Whether the Respondent or Vendor brought the activity cited as a cause for debarment or suspension to the attention of the appropriate government official in a timely manner.
- Whether the Respondent or Vendor has fully investigated the circumstances surrounding the cause for debarment or suspension and, if so, made the results of the investigation available to the Chief Procurement Officer.
- Whether the Respondent or Vendor cooperated fully with the Central Procurement Office or State Agencies during any investigation or any court or administrative action.
- Whether the Respondent or Vendor has paid or has agreed to pay all criminal, civil, or administrative liability or damages for the activity, including any investigative or administrative costs incurred by the State, and has made or agreed to make full restitution.

- Whether the Respondent or Vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment or suspension.
- Whether the Respondent or Vendor has implemented or agreed to implement remedial measures, including any identified by the State.
- Whether the Respondent or Vendor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- Whether the Respondent or Vendor has had adequate time to eliminate the circumstances within the Respondent's or Vendor's organization that led to the cause for debarment or suspension.
- Whether the Respondent's or Vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment or suspension and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this Section 8.4.3 is not determinative of a Respondent's or Vendor's present responsibility. Accordingly, if a cause for debarment or suspension exists, the Respondent or Vendor has the burden of demonstrating, to the satisfaction of the Chief Procurement Officer, its ability to fulfill its present responsibilities and that debarment or suspension is unnecessary.

8.4.4. *Continuing Duty to Disclose.*

Respondents, or Vendors to whom a contract has been awarded must provide immediate written notice to the State if at any time the Respondent or Vendor learns that it has failed to disclose information that its principals, affiliates or subcontractors are excluded or disqualified from contracting with the State, local governments within the State, states other than Tennessee, local governments in a state other than Tennessee, or the federal government.

8.4.5. *Written Notice.*

If the Chief Procurement Officer determines that a Respondent or a Vendor should be suspended or debarred from contracting with the State, the Chief Procurement Officer shall provide the Respondent or Vendor with written notice of the grounds for which the Respondent or Vendor is debarred or suspended from participating in State solicitations. The notice shall also specify the period of time in which the Respondent or Vendor is debarred or suspended. The Respondent or Vendor may, within seven (7) calendar days from when the notice of debarment or suspension was sent, request an informal hearing and provide a response to the CPO why the Vendor should not be debarred or suspended. The decision of the Chief Procurement Officer will be final and shall not be subject to further administrative review.

8.4.6. *Reinstatement or Reduction.*

Respondents or Vendors who seek to be reinstated after being debarred or suspended may submit a letter to the Chief Procurement Officer stating why the Respondent or Vendor should be reinstated. The Respondent's or Vendor's request for reinstatement should include the steps the Respondent or Vendor has taken to avoid the circumstances that gave rise to debarment or suspension and what action Respondent or Vendor has been taken to mitigate any harm caused by the Respondent's or the Vendor's actions. For good cause shown, the Chief Procurement Officer, at his or her sole discretion, may reduce the period of debarment or suspension or rescind the debarment or suspension, thus reinstating the Respondent or the Vendor in good standing. The Chief Procurement Officer may rescind or reduce the period or extent of debarment or suspension, upon the Respondent's or Vendor's request, supported by documentation, for the following reasons:

- Newly discovered material evidence;
- Reversal of the conviction, administrative findings or civil judgment upon which the debarment was based;
- Bona fide change in ownership or management;
- Elimination of other causes for which the debarment or suspension was imposed; or
- Other reasons the Chief Procurement Officer deems appropriate.

REQUEST: Add a question regarding debarments and suspensions to the Requests for Proposals (RFP) Template and the Requests for Qualifications (RFQ) Templates in section B., General Qualifications & Experience Items. Add or change the question regarding debarments and suspensions in Edison to be utilized for Invitations to Bid ("ITB"), as appropriate.

RFP and RFQ #:

Provide a statement and any relevant details addressing whether the Respondent is any of the following:

- (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;
- (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 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) 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

(d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

Edison #:

Please answer yes or no to the following. If "yes", describe using additional pages and attach to the Response including any relevant details:

- (a) is the Respondent presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;
- (b) has the Respondent 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 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) is the Respondent 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
- (d) has the Respondent within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.

REQUEST: Make "Debarment and Suspension" a mandatory term and condition in all applicable contracts and grants models and templates. The two (2) variations of the clause, depending on whether the contract is with a grantee or contractor, are copied below and currently included as optional terms and conditions.

With a Grantee:

E.#. Debarment and Suspension. The Grantee 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 Grant 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 Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

With a Contractor:

Added to *pro forma* contract section E.#. or as an Edison Standard Term and Condition, as appropriate:

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 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;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

**CERTIFICATION RELATED
DOCUMENTATION**



STATE OF TENNESSEE
PROCUREMENT COMMISSION

3rd Floor, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102
(615) 741-1035 Fax (615) 741-0684

RE-CERTIFICATION

1. Item No. 763.A143
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation
Region 2 headquarters, Regional Transportation Management Center
7500 Volkswagen Drive Chattanooga, TN
Annual Price: \$17,694.36 or \$0.514656 per square foot
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2014 – 03/31/2015

2. Item No. 763.32
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation
Region 1 Headquarters, Knoxville, TN
Annual Price: \$60,311.88 or \$0.8246538 per square foot
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2014 – 03/31/2015

3. Item No. 763.A66
Service: Custodial and Day Porter Services
Agency/Location: Tennessee Department of Transportation
Region 4 Headquarters, 300 Benchmark Road, Jackson, TN
Annual Spend: \$20,543.28 or 9.8766 per man-hour
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2014 – 03/31/2015

LARRY MARTIN, Chairman
Commissioner of Finance & Administration

JUSTIN P. WILSON
Comptroller of the Treasury

ROBERT E. OGLESBY
Commissioner of General Services

MIKE PERRY
Chief Procurement Officer

4. Item No. 763A74
Service: Grounds Maintenance & Janitorial Services
Agency/Location: Department of Environment & Conservation
Bicentennial Mall State Park, Nashville, TN
Annual Price:
 Grounds Maintenance: \$165,881.40
 Janitorial Service: \$29,061.72
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/14 – 03/31/15

5. Item No. 763.21D
Service: Grounds Maintenance Services
Agency/Location: Department of Intellectual & Developmental Disabilities
Clover Bottom Developmental Center & Middle Tennessee Regional Health Office
275 Stewarts Ferry Pike, Nashville, TN
Annual Price:
 Scheduled Services: \$173,242.80 for 36 cycles
 Non-Scheduled Services (as needed): \$33,475.50 for 36 weeks
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/14 – 03/31/15

6. Item No. 763.B11
Service: Janitorial Services
Agency/Location: Tennessee Board of Regents
Tennessee Technology Center, 716 McMurray Blvd East,
Hartsville, TN.
Annual Price: \$31,649.40 or \$1.8354 per square foot
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 04/01/2014 – 03/31/2015



STATE OF TENNESSEE
PROCUREMENT COMMISSION
3rd Floor, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102
(615) 741-1035 Fax (615) 741-0684

RE-CERTIFICATION

1. Item No. 763.A79
Service: Janitorial Services
Agency/Location: Tennessee Emergency Management Agency
803 North Concord Street, Knoxville, TN 37919
Annual Price: \$9,005.52 or \$0.90055 per square foot
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 05/01/2014 – 04/30/2015

2. Item No. 763.54
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation
Region 3 Headquarters, 6601 Centennial Blvd., Nashville, TN
Annual Price: \$154,115.52 or \$1.6122 per square foot per year
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 05/01/2014 – 04/30/2015. This recertification consolidates the E building certification/contract with the recertification/contract for janitorial services for the remaining sections of the Region 3 headquarters.

3. Item No. 763.36a, 763.36b, 763.36c, 763.36d, 763.36e
Service: Incontinent Briefs & Pads
Agency/Location: Statewide
Annual Spend: \$353,761.08 (03/2013 through 02/2014)
No price increase requested. All fuel surcharges have been removed and built into the new unit prices. Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 05/01/2014 – 04/30/2015

LARRY MARTIN, Chairman
Commissioner of Finance & Administration

JUSTIN P. WILSON
Comptroller of the Treasury

ROBERT E. OGLESBY
Commissioner of General Services

MIKE PERRY
Chief Procurement Officer

4. Item No. 763.A53
Service: Janitorial Services, Tennessee Army National Guard
Agency/Location: 117th Regional Training Institute, Bldg 500
Smyrna, TN
Annual Price: \$29,362.80 annually or \$0.9200 per square foot.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 06/01/2014 – 05/31/2015

5. Item No. 763.64
Service: Janitorial Services
Agency/Location: Metropolitan Nashville Water & Sewage Services, 1700 3rd Avenue,
North, Nashville.
Annual Price: \$34,883.04 annually or \$1.28625 per square foot
No price increase requested. Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 05/01/2014 – 04/30/2015

6. Item No. 763.A144
Service: Lawn Maintenance Services
Agency/Location: Department of Intellectual & Developmental Disabilities
Ruilman Center, 293 Kirkpatrick Lake Road, Lebanon.
Annual Price: \$7,828.67 annually or \$52.19 per acre
Re-Certification Requested for Period of 05/01/2014 – 04/30/2015

7. Item No. 763.A165
Service: Lawn Maintenance & Janitorial Services
Agency/Location: Lakeland Elementary School
10050 Oakseed Lane, Lakeland.
Annual Price:
 Lawn Care: \$15,762.91 annually or \$47.55026 per acre
 Janitorial: \$120,000.08 annually or \$1.02 per square foot
Certification Requested for Period of 07/01/2014 – 06/30/2015

CORRECTION OF ERRORS REPORT #01

CORRECTION OF ERRORS REPORT

AUTHORITY: Article XIV of the *Tennessee Procurement Commission Bylaws and Rules of Procedure* authorizes Procurement Commission Staff to correct obvious typographical or clerical errors that are discovered after a model, template, policy, or other item has been approved for publication on the Central Procurement Office website by the Procurement Commission, provided the error is insubstantial. By way of example only, misspelled words, incorrect acronyms, capitalization, punctuation, incorrect page numbers or references, misaligned formatting, and the like are insubstantial errors that may be corrected by Procurement Commission Staff. All corrections of insubstantial errors by Procurement Commission Staff shall be reported to the Procurement Commission.

DOCUMENT	SECTION	CURRENT LANGUAGE	REVISED LANGUAGE
Procurement Procedures Manual of the Central Procurement Office	§10.4.	The use of Statewide Contracts to the fullest extent practicable has enormous advantages to the State in terms of terms of supply, quantity, quality, pricing, discounts and rebates. Towards that end, the Central Procurement Office and State Agencies are required to utilize Statewide Contracts for procuring goods or services to the extent these goods or services are available on an existing Statewide Contract.	The use of Statewide Contracts to the fullest extent practicable has enormous advantages to the State in terms of terms of supply, quantity, quality, pricing, discounts and rebates. Towards that end, the Central Procurement Office and State Agencies are required to utilize Statewide Contracts for procuring goods or services to the extent these goods or services are available on an existing Statewide Contract.
OIR Pre-Approval Endorsement Request	Approved date in header	12/20/2014	2/20/2014

The Procurement Commission Staff members have approved these changes, as indicated by signature below:

Chief Procurement Officer	Central Procurement Office	Department of Finance and Administration	Comptroller of the Treasury
			