



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 #029
THURSDAY, FEBRUARY 15, 2018 – 11:00 A.M.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM

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| (12) GR And GG Templates and IG and GE Models, Optional Section E. # Provisions, Incorporation of Required Clauses for Federal Awards - NEW | 44 |

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

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| | (13) Central Procurement Office Policy Number 2013-007, <i>Grant Management and Subrecipient Monitoring Policy and Procedures</i> , Section 4, Grantee Selection Process – Incorporation of Procurement Standards, 2 C.F.R §§ 200.317 to 200.326 | 47 |
| IV. | Reports: (see attached documentation) | |
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| V. | Other Business | |
| | • Consent to Cancel March 15, 2018 Procurement Commission Meeting - next meeting would be April 19, 2018 | -- |
| VI. | Adjournment | -- |

**MINUTES OF DECEMBER 14, 2017
MEETING**



MINUTES
PROCUREMENT COMMISSION MEETING #028
THURSDAY, DECEMBER 14, 2017 - 3:00 P.M.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM

Members in Attendance:

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

Others in Attendance:

Toni Stuart, Ellen Lipinski, Shannon Howell, Brandon Silby, Meryl McVicker, Shelia Simpson, Clinton Sprinkle, Cooper Gallimore, Sherry Whitby, Alex Komisar, Don Ivancic, Chris Salita, Andy Kidd, Daniel Leeson, Maggie Wilson, Jorel Covin, Zachary Lebarst, Charlotte McKinney, Luke Ashley (Johnson Poss)

I. Call to Order.

Comptroller Wilson called the meeting to order and recognized that a quorum of Procurement Commission ("Commission") members was present. Comptroller Wilson stated the Commissioner Martin had specifically authorized the meeting to proceed in his absence. Comptroller Wilson added that the meeting would be limited to items appearing on the agenda and that no items that had not been reviewed and commented on by Commissioner Martin in advance of the meeting would be heard by the Procurement Commission.

II. Minutes from the August 17, 2017 Procurement Commission Meeting.

Comptroller Wilson presented the August 17, 2017, minutes for approval and asked if there were any corrections or additions. Comptroller Wilson stated that the minutes had been reviewed by his office and appeared to be in order. Commissioner Oglesby made a motion to approve the minutes from the August 17, 2017, Procurement Commission meeting as presented. Comptroller Wilson seconded the motion; whereupon the minutes were approved.

Comptroller Wilson asked Mr. Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the next agenda item.

III. Proposed Changes to Tennessee Procurement Commission Bylaws and Rules of Procedure.

Mr. Krivacka explained that this proposal would create a consent agenda for the Procurement Commission whereby matters that are mostly housekeeping in nature and matters that would provide minor clarifications to existing policies or procedures would be heard and approved all at one time. Mr. Krivacka stated that Procurement Commission members would have the ability to pull any item from the consent agenda to be discussed individually or to vote on an item individually.

Comptroller Wilson stated that this proposal had been discussed previously and was a good idea. Comptroller Wilson made a motion to approve the Proposed Changes to Tennessee Procurement Commission Bylaws and Rules of Procedure. Commissioner Oglesby seconded the motion; whereupon the item was approved.

New Business:

IV. Proposed Changes to the following Central Procurement Office documents.

Comptroller Wilson asked Mr. Krivacka to present the following New Business agenda items:

(1) Click-Wrap Agreement Approval Request

Mr. Krivacka summarized the following points with regard to the Click-Wrap Agreement Approval Request proposal:

- This proposal contains several changes to the Click-Wrap Agreement Approval Request, which is typically utilized for licenses of software, internet-based services, or computer services. Some of the most significant changes in this proposal are as follows:
 - The proposal clarifies that the Click-Wrap Agreement Approval Request will now be limited to purchases where the total value of the purchase is \$10,000 or less. This proposal also clarifies that ordinary rules of procurement related to informal purchase authority and purchases over \$50,000 will apply to those transactions that are over \$10,000.
 - Additional procedural instructions have been added and there is now a place for procurement professionals to confirm that the service is not available on a Statewide Contract ("SWC"). CPO's current procedure is that if the service is available on a SWC, the terms and conditions of the SWC provide that it cannot be modified except by an amendment, which means that a Click Wrap Agreement is ineffective to modify, alter, or amend the SWC.
 - The Click-Wrap Agreement Approval Request now asks procurement professionals to add details regarding the type of sensitive data involved (if any). This will allow the contract to be flagged in the event that it does contain sensitive data as determined by Strategic Technology Solutions ("STS"). We now have an open records act confidentiality provision

- relating to certain IT information such as vendors, IT infrastructure, and software, that are needed to protect State IT systems.
- If oversight examiners determine that a Click-Wrap Agreement Approval Request should be denied, there is a new section that deals with the grounds upon which the request for a Click Wrap Agreement was denied.

Seeing no questions or comments, Commissioner Oglesby made a motion to approve the Click-Wrap Agreement Approval Request as presented. The motion was seconded by Comptroller Wilson; whereupon the item was approved.

(2) Limitation of Contractor's Liability Request

Mr. Krivacka indicated that if the consent agenda process were already in place, agenda item (2) would most likely appear on the consent agenda as this proposal is merely a renaming of the document. Mr. Krivacka summarized the following points with regard to the Limitation of Contractor's Liability Request:

- The title, *Limitation of Liability Request*, has been modified to *Limitation of Contractor's Liability Request*, to focus on the fact that the purpose of this request document is only for changes to the limitation of a Contractor's liability versus any changes to the limitation of the State's liability in the contract document. Going forward with this understanding, every time a request is made to change the limitation of a Contractor's liability, the Limitation of Contractor's Liability Request form would be used. If the request is to change the limitation of the State's liability, then a Rule Exception Request ("RER") would need to be processed.

Comptroller Wilson added that this proposal also makes a change as far as the Commissioner of the Department of Finance and Administration's approval being required to comply with the statutory requirements. Mr. Krivacka confirmed that Comptroller Wilson was correct in that there were a number of statutory requirements that dealt with how to decrease the limitation of liability as well as how to increase it. Mr. Krivacka added that the other changes in this proposal are to conform the Limitation of Contractor's Liability Request to statute.

Comptroller Wilson made a motion to approve the Limitation of Contractor's Liability Request as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(3) Rule Exception Request ("RER") Template

Mr. Krivacka indicated that agenda item (3) is another example of an item that would appear on the consent agenda in the future. Mr. Krivacka summarized the following points with regard to the Rule Exception Request ("RER") Template proposal:

- This proposal relates to agenda item (2) Limitation of Contractor's Liability Request and provides instructions to make it very clear that the Limitation of Contractor's Liability Request form is to be used to change the Contractor's

limitation of liability and the RER form is to be used to change the State's limitation of liability.

Seeing no questions or comments, Commissioner Oglesby made a motion to approve the Rule Exception Request ("RER") Template as presented. Comptroller Wilson seconded the motion; whereupon the item was approved.

(4) Central Procurement Office Policy Number 2013-004, *Contract Management Policy and Procedures*, Section 5.3.2, Limitations of Liability

Mr. Krivacka summarized the following points with regard to Central Procurement Office Policy Number 2013-004, *Contract Management Policy and Procedures*, Section 5.3.2, Limitations of Liability proposal:

- This proposal also relates to agenda item (2) and will update Section 5.3.2. of Central Procurement Office Policy Number 2013-004, *Contract Management Policy and Procedures* to comply with Tenn. Code Ann. § 12-3-701, regarding Limitations of Liability, as amended. Tenn. Code Ann. § 12-3-701 deals with the procedure by which the default, two times the contract amount, is changed – i.e., either lowered or raised.

Seeing no discussion, Comptroller Wilson made a motion to approve Central Procurement Office Policy Number 2013-004, *Contract Management Policy and Procedures*, Section 5.3.2, Limitations of Liability as presented. The motion was seconded by Commissioner Oglesby; whereupon the item was approved.

(5) Interagency Agreement – Grant Model ("IG"), E.#. FERPA

Mr. Krivacka noted that this is an example of another agenda item that would most likely be on a consent agenda in the future. Mr. Krivacka presented the following points with regard to the Interagency Agreement – Grant Model ("IG"), E.#. FERPA proposal:

- This proposal deals with the renaming of the optional FERPA clause. In the past FERPA was incorrectly referred to as the "Federal Educational Rights and Privacy Act" when in fact it is the "Family Educational Rights and Privacy Act".
- This proposal will also remove the sentence requiring the Grantee to indemnify and hold harmless the State since the Interagency Grant Model will only be used between two Tennessee state agencies, neither of which has the separate legal capacity to contract or sue and be sued; or a Tennessee state agency and a member of the University of Tennessee ("UT") or Tennessee Board of Regents ("TBR") educational systems.

Comptroller Wilson added that it is redundant for the State to hold itself harmless. Seeing no additional discussion, Commissioner Oglesby made a motion to approve the Interagency Agreement – Grant Model ("IG"), E.#. FERPA as presented. Comptroller Wilson seconded the motion; whereupon the item was approved.

(6) Tennessee Local or Federal Government ("GU") Model

Mr. Krivacka presented the following points with regard to the Tennessee Local or Federal Government ("GU") Model proposal:

- At the request of the Comptroller's Office, this proposal will increase the Records clause to require the Contractor to maintain documentation for a period of five (5) years.
- This proposal will also add the Iran Divestment Act contract clause, requiring the Contractor to certify that it is not on the list of persons engaged in investment activities in the Republic of Iran.
- Both of these changes are being requested to create symmetry with other CPO documents.

Seeing no discussion, Commissioner Oglesby made a motion to approve the Tennessee Local or Federal Government ("GU") Model as presented. The motion was seconded by Comptroller Wilson; whereupon the item was approved.

(7) Contract Termination Request

Mr. Krivacka summarized the following points with regard to the Contract Termination Request proposal:

- CPO Rule 0690-03-01-.25 provides that "if a State Agency determines it to be in the best interests of the State to terminate a contract before the contract end date, either for cause or convenience, the head of the State Agency shall request and obtain the approval of the Chief Procurement Officer prior to any notice of contract termination." The Contract Termination Request facilitates these requests and has been modified to add a question to provide details regarding the termination basis (e.g., convenience, cause, or lack of funding); and will also add a question for the State Agency to confirm that notice will be sent to the Contractor in accordance with any applicable notice requirements in the contract. If the State is going to terminate a contract this ensures that the notice requirement is fulfilled.
- These are common questions asked by reviewers and this modification will assist with the review process.

Seeing no questions or comments, Commissioner Oglesby made a motion to approve the Contract Termination Request as presented. Comptroller Wilson seconded the motion; whereupon the item was approved.

(8) Central Procurement Office Policy Number 2015-010, *Statewide Purchasing Card Policy and Procedures*

Mr. Krivacka summarized the following points with regard to the Central Procurement Office Policy Number 2015-010, *Statewide Purchasing Card Policy and Procedures* proposal:

- This proposal contains several changes to Central Procurement Office Policy Number 2015-010, *Statewide Purchasing Card Policy and Procedures* ("Policy")

that will conform the Policy to how the P-Card program will be administered and to make the P-Card program easier to administer.

- Section 5.3., State Agency P-Card Program Coordinator:
 - This proposal amends the amount of time needed to get a new agency P-Card Coordinator access and training to 5 business days.
 - This proposal adds a requirement for the state agency P-Card Program Coordinator to complete training and sign the program coordinator designation form.
- This proposal adds a requirement to Section 5.7.1., Cardholder Responsibilities, that the Cardholder must also be a full-time State employee. Under the current policy, that requirement is not entirely clear and the current policy almost suggests that a part-time employee could be a Cardholder.
- Section 9.1. Duty of State Agencies:
 - This proposal removes the bullet point requiring “independent review of the P-Card account maintenance activity at least monthly if the State Agency P-Card Program Coordinator is also a Cardholder or User.”
 - This change is recommended because the preferred practice would be to prevent the potential conflict of interest by not having a P-Card Program Coordinator also be a cardholder.
- Section 12. Purchases Reserved for the Designated State Agency Central Fiscal Office Cardholder: “Food, beverage, or catering charges for meetings” has been added to the list of purchases authorized by the State Agency Fiscal Director. A number of requests to allow the purchase of food, beverages, or catering charges for meetings have been received by the CPO. This proposal would reduce the number of exception requests received and would authorize the purchase of food and beverages under the Policy.

Comptroller Wilson noted that this proposal also includes that additional training is required and Mr. Krivacka confirmed that was correct. Commissioner Oglesby clarified that the training is aspirational in nature but there would be an audit finding if the training were not completed as outlined. Mr. Krivacka and Comptroller Wilson stated that Commissioner Oglesby was correct and Comptroller Wilson added that he thought this proposal was a good idea.

Seeing no additional discussion, Comptroller Wilson made a motion to approve Central Procurement Office Policy Number 2015-010, *Statewide Purchasing Card Policy and Procedures* as presented. Commissioner Oglesby seconded the motion, whereupon the item was approved.

(9) Request for Qualifications (“RFQ”) Template

Mr. Krivacka summarized the following points with regard to the Request for Qualifications (“RFQ”) Template proposal:

This proposal will add a few clarifications to the instructions and template language. In particular:

- The following note has been added to the instructions at Section 1.5. Collaborative Value Development (“CVD”):

"Please refer to Central Procurement Office Policy Number 2013-002, *Procurement Methods Policy and Procedures* for more details."

- A note has been added to Section 5.6: Option: Contract Award:
Note: an approved Rule Exception Request ("RER") will be required if this RFQ will be followed by anything other than a Request for Proposals.

This note clarifies that if a procurement professional wishes to use an RFQ to award a contract, an RER is required. An RER has always been required, but it was felt that additional instructions were needed in order to make this a point of emphasis.

- Section 5.3., has been amended to clarify and accommodate those situations where a cost proposal may be included as part of the response submittal but not part of the evaluation process. For example, if the State is procuring attorney, architect, engineer, actuarial, or accountant services, a technical proposal and a cost proposal could be submitted; however, only the technical proposal would be evaluated. By statute, the State could only award the contract on the basis of competency. The cost proposal would only be opened once a contract award was made.

Seeing no additional discussion, Comptroller Wilson made a motion to approve the Request for Qualifications ("RFQ") Template as presented. Commissioner Oglesby seconded the motion, whereupon the item was approved.

(10) Solicitation Configurator Terms addition

Mr. Krivacka summarized the following points with regard to the Solicitation Configurator Terms addition proposal:

- This proposal adds a few additional terms to solicitations generated in Edison as follows:
 - Adds Inspection of Procurement File and Protest by Respondent to the configurator.
 - Also adds the Negotiations term for use by only the CPO.

Seeing no additional discussion, Commissioner Oglesby made a motion to approve the Solicitation Configurator Terms addition as presented. Comptroller Wilson seconded the motion, whereupon the item was approved.

(11) Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information

Mr. Krivacka summarized the following points with regard to the Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information proposal:

- This is another item that could appear on a consent agenda in the future as this proposal will simply update Section 11.2 to accurately reflect the

document names of the models and templates available in the resources section of the CPO's webpage on TEAM TN.

Seeing no additional discussion, Commissioner Oglesby made a motion to approve the Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information as presented. Comptroller Wilson seconded the motion, whereupon the item was approved.

(12) Grant ("GR") and Governmental Grant ("GG") Templates, D. 27 and optional E.# SNAP

Mr. Krivacka summarized the following points with regard to the Grant ("GR") and Governmental Grant ("GG") Templates, D. 27 and optional E.# SNAP proposal:

- This proposal will amend the optional D.27, State Interest in Equipment or Motor Vehicles contract term in the GR and GG contracts to add a new subsection "E" to be numbered based on the discretion of the drafter of the document. The optional D.27, State Interest in Equipment or Motor Vehicles is being changed to require a notation of the Vehicle Identification Number ("VIN") on the certificate of title which is the way the Department of Revenue notes security interest in certificates of title. Under the current Grant Policy when grant funds are made available to Grantees and they buy equipment, the State has an interest in the equipment.
- This proposal will add a new optional term for grants that involve the Supplemental Nutrition Assistance Program ("SNAP"). The included Title VI Civil Rights language should be included if the Grant Contract involves SNAP.

Comptroller Wilson asked why this provision was considered optional and not mandatory since it deals with SNAP which is a two billion dollar program. Mr. Krivacka responded that the provision could be made a mandatory requirement but it would not be necessary in a good number of grant agreements. Comptroller Wilson indicated that was acceptable and made a motion to approve the Grant ("GR") and Governmental Grant ("GG") Templates, D. 27 and optional E.# SNAP as presented. Commissioner Oglesby seconded the motion, whereupon the item was approved.

(13) Contractor Hosted Services and Confidential Data - Optional Language

Mr. Krivacka prefaced this agenda item by saying that additional changes would be presented at the next Procurement Commission meeting and summarized the following points with regard to the Contractor Hosted Services and Confidential Data - Optional Language proposal:

- This proposal is an attempt to standardize the privacy and data requirements that are imposed on Contractors where the Contractor will be hosting services. It is an attempt to distinguish between public data and sensitive data. The next version that will be presented to the Procurement Commission later will deal with security audits, additional requirements, and heightened requirements for privacy data.

Comptroller Wilson indicated that his office had reviewed this proposal and found it to be appropriate to adopt as a temporary measure. Seeing no additional discussion, Comptroller Wilson made a motion to approve the Contractor Hosted Services and Confidential Data - Optional Language as presented. Commissioner Oglesby seconded the motion, whereupon the item was approved.

Mr. Krivacka asked if he could present the items under "Other Business" at this point and the Commission members agreed.

V. Other Business.

(1) Update on CPO Glossary project:

- Mr. Krivacka stated that the CPO Glossary has been added to the reference materials available online in the *CPO Library* found at:
<http://www.tn.gov/generalservices/topic/education-library>

Mr. Krivacka explained that the CPO Glossary will contain terms used in CPO rules, policies, procedures, models, templates, etc. Comptroller Wilson added that the glossary will assist others in understanding what these terms mean and is a good idea. Mr. Krivacka agreed and stated that the glossary will be an aid for the public.

(2) Governor's Office of Diversity Business Enterprises ("Go-DBE") Follow-up on Disabilities from last meeting:

Mr. Krivacka stated that there were questions about changes to statute that caused changes to CPO policies and procedures by adding a new category of "businesses owned by persons with disabilities". How the CPO determines whether a business is a "business owned by persons with disabilities" will largely be controlled by Tenn. Code Ann. § 12-3-1102 that was amended in 2017 to add the new category to the Go-DBE program.

The definition for a "business owned by persons with disabilities" is statutorily defined by Tenn. Code Ann. § 12-3-1102:

(11) "Business owned by persons with disabilities" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more persons with a disability; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability;

(12) "Person with a disability" means an individual who meets at least one (1) of the following:

- (A) Has been diagnosed as having a physical or mental disability resulting in marked and severe functional limitations that is expected to last no less

than twelve (12) months;

(B) Is eligible to receive social security disability insurance (SSDI); or

(C) Is eligible to receive supplemental security income (SSI) and has a disability as defined in subdivision (12)(A);

This statutory definition is the criteria Go-DBE is using to determine the eligibility of businesses for this new category.

(3) Grants Update: Recently the federal government promulgated a new circular relating to the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 C.F.R. §§ 200.317 to 200.326) that contained a number of significant changes. In the interest of getting compliance with these new changes which have a deadline of December 31, 2017, the CPO has processed a blanket Rule Exception Request ("RER") that will bring the State into immediate compliance with this federal requirement. Starting early next year the CPO will begin making changes to its rules, policies, procedures, and templates relating to grants to bring the State into permanent compliance with those requirements. At the next Procurement Commission meeting, some additional changes as they relate to grants and this program will be presented.

Comptroller Wilson asked if any action on this item needed to be taken at this time by the Procurement Commission. Mr. Krivacka indicated that the blanket RER done by the CPO will take care of the matter for now and that no action by the Procurement Commission was necessary at this point.

Comptroller Wilson thanked Mr. Krivacka for his presentation and moved to the next agenda item.

(4) Consent to Cancel the December 2017 and January 2018 Procurement Commission Meetings:

Comptroller Wilson and Commissioner Oglesby gave their verbal consent to cancel the December 21, 2017. Comptroller Wilson requested that written consent be obtained from Commissioner Martin since he was not in attendance at the meeting. Comptroller Wilson stated that he wanted to be very careful about obtaining consent from all members to cancel the meeting.

VI. Reports:

Chief Procurement Officer Perry presented the following standard reports for acknowledgement and for informational purposes:

- 1) Certification Related Items
- 2) Limitation of Liability
- 3) Correction of Errors
- 4) Memorandum of Understanding

VII. Adjournment

Seeing no other business to be heard, a motion to adjourn was made by Comptroller Wilson and seconded by Commissioner Oglesby; whereupon the December 14, 2017 Procurement Commission meeting was adjourned.

PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE,
SECTION 6.7.1, INFORMAL PURCHASES

REQUEST: Revise Section 6.7.1 of the *Procurement Procedures Manual of the Central Procurement Office* as follows:

6.7. Purchase Order Exemptions.

Due to the unique nature of the goods or services involved, the CPO will not require a Purchase Order to accompany payment requests for the enumerated items below.

6.7.1. Informal Purchases.

The items listed below do not require a Purchase Order or a contract if:

- (a) they are not available on a statewide or agency term contract;
- (b) they are supported by an invoice from the vendor of the goods or services;
- and,
- (c) performance occurs in no more than ninety (90) days for the following:
 - Telephone bills
 - Utility bills, including connection fees
 - Postage charges in connection with use of postage meter machines owned or leased by the State
 - Title insurance
 - Textbooks and instructional materials approved by the State Textbook and Instructional Materials Quality Commission

PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE,
SECTION 5.4.7, EXCEPTIONS FROM
REQUISITIONS FOR PURCHASE –
DIRECT PURCHASE ORDER

REQUEST: Revise Section 5.4.7, Exceptions from Requisitions for Purchase – Direct Purchase Order, of the *Amended Procurement Procedures Manual of the Central Procurement Office* as follows:

5.4.7. Exceptions from Requisitions for Purchase - Direct Purchase Orders

Direct Purchase Orders are Purchase Orders that are created without first creating a Requisition for Purchase in Edison.

The Direct Purchase Order *may* be used for Contracts with funds identified by the Agency to pay the Contractor or Grantee, such as with Delegated Authorities or Delegated Grant Authorities.

A Requisition *shall* be used if any of the following apply:

- The purchase requires External Approvals. In addition to the approvals required in section 5.15.3, External Approvals may also be required by:
 - Finance and Administration, Budget
 - Finance and Administration, Strategic Technology Services (IT products and services)
 - Department of Human Resources (training and staffing)
 - TDEC Hospitality Purchases
 - Department of General Services, Printing – Printing equipment and services
 - Department of General Services, Postal – Postal equipment and services
 - Department of General Services, CPO – Radio equipment
- The purchase is made using a Special Request;
- The purchase utilizes TN SmartShop;
- The purchase utilizes the Edison Inventory module; and
- The purchase is a request to establish a new Contract.

***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE,
SECTION 4.1, DEFINITIONS***

REQUEST: Revise Section 4.1, Definitions, specifically “Special Request,” of the *Amended Procurement Procedures Manual of the Central Procurement Office* as follows:

4. Definitions, Abbreviations and Codes.

4.1. Definitions.

As used in this Manual, unless the context otherwise requires:

“Special Request” means the purchase of goods or services for which a price is not specified within Edison.

**FEE FOR GOODS OR SERVICES
CONTRACT (“FA”) TEMPLATE, D.18,
LIMITATION OF CONTRACTOR’S
LIABILITY**

REQUEST: Revise optional Section D.18, Limitation of Contractor's Liability, of the Fee for Goods or Services Contract Template (FA) as follows:

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to NUMBER (#), PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

Limitation of Liability

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required. This language is allowed only if the CPO has agreed in negotiations to use of this language.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract, unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**FEE FOR GOODS OR SERVICES
CONTRACT (“FA”) TEMPLATE,
SECTION D.32, INSURANCE**

REQUEST: Revise Section D.32, Insurance, of the Fee for Goods or Services Contract Template (FA) as follows:

- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self-insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

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

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL insurance, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations, products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

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

- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

**FEE FOR GOODS OR SERVICES
CONTRACT (“FA”) TEMPLATE,
OPTIONAL SECTION D. #,
PROFESSIONAL LIABILITY
INSURANCE**

REQUEST: Revise optional Section D provision, Professional Liability Insurance, under Insurance Options of the Fee for Goods or Services Contract Template (FA) as follows:

Insurance Options

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "written amount Dollars (\$NUMBER AMOUNT)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

b. Workers' Compensation and Employer Liability Insurance

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

Option 2: Professional Liability Insurance

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

- d. Professional Liability Insurance**

 - i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:**

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

**GRANT (“GR”) TEMPLATE, OPTIONAL
SECTION E. #, INSURANCE**

REQUEST: Replace Section E.#, Insurance, of the Grant Contract Template (GR) as follows:

Insurance

Add the following Section as appropriate. Revise minimum coverage amounts and deleting any unneeded subsections. If unsure whether the Section is applicable, consult the CPO legal team.

E.#.

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

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

Grantee shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Grantee shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Grantee shall provide the State evidence that all sub-grantees maintain the required insurance or that sub-grantees are included under the Grantee's policy. At any time, the State may require Grantee to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Grantee self-insures, then a COI will not be required to prove coverage. Instead

Grantee shall provide a certificate of self-insurance or a letter, on Grantee's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

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

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

a. Commercial General Liability ("CGL") Insurance

- 1) The Grantee shall maintain CGL insurance, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations, products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Grantee shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Grantees statutorily required to carry workers' compensation and employer liability insurance, the Grantee shall maintain:
 - i. Workers' compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars **(\$1,000,000)** per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Grantee certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Grantee shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Grantee employs fewer than five (5) employees;
 - ii. The Grantee is a sole proprietor;

- iii. The Grantee is in the construction business or trades with no employees;
- iv. The Grantee is in the coal mining industry with no employees;
- v. The Grantee is a state or local government; or
- vi. The Grantee self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

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

d. Professional Liability Insurance

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

**CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2013-007, *GRANT
MANAGEMENT AND SUBRECIPIENT
MONITORING POLICY AND
PROCEDURES* – SECTION 10,
DEBARMENT AND SUSPENSION**

REQUEST: Add Debarment and Suspension provision to *Central Procurement Office Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007* as required by Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t).

10. Debarment and Suspension.

The State requires all contracts to contain a provision where a contracting party may be considered debarred or suspended from doing business with the State. The State hereby incorporates the Debarment and Suspension provision from Tenn. Comp. R. & Regs. 0690-03-01-.17 (2) (t) as mandatory language in all affected grant contracts.

**GRANT (“GR”) AND GOVERNMENTAL
GRANT (“GG”) TEMPLATES, SECTION
D. 34, DEBARMENT AND SUSPENSION**

REQUEST: Add Debarment and Suspension provision as mandatory Section D language to GG and GR templates as required by Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t).

D. 34 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 for 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, or presently fall under any of the prohibitions of sections a-d.

**ENDOWMENT GRANT (“GE”) MODEL,
SECTION D.28 – DEBARMENT AND
SUSPENSION**

REQUEST: Add Debarment and Suspension provision as mandatory Section D language to GE model as required by Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t).

D. 28 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 for 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, or presently fall under any of the prohibitions of sections a-d.

**GOVERNMENTAL GRANT (“GG”)
TEMPLATE, OPTIONAL SECTION E. #
PROVISIONS – FAMILY EDUCATIONAL
RIGHTS AND PRIVACY ACT &
TENNESSEE DATA ACCESSIBILITY,
TRANSPARENCY & ACCOUNTABILITY
ACT (“FERPA”) AND RULE 2
COMPLIANCE**

REQUEST: Remove indemnification language from optional Section E provisions, Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act (FERPA) and Rule 2 Compliance of the Governmental Grant Template (GG) as follows:

Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act

Add the following section only if the Grantee will have access to personally identifiable student information or student information that is confidential pursuant to federal or state law.

- E. #. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Grantee shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Grantee warrants that the Grantee is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Grant Contract. The Grantee agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Grant Contract. The Grantee agrees to maintain the confidentiality of all education records and student information. The Grantee shall only use such records and information for the exclusive purpose of performing its duties under this Grant Contract.

The Grantee shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Grantee agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Grantee access, and to only use such data for the exclusive purpose of performing its duties under this Grant Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Grantee shall be reported to the State within twenty-four (24) hours.

Tennessee Department of Mental Health and Substance Abuse Services

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Section(s) as appropriate:

- E.#. Rule 2 Compliance. The State and the Grantee shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 C.F.R. §§ 2.1 *et seq.*
- a. The Grantee warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Grant Contract.
 - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Grant Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.

- c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Grantee in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.

**GR AND GG TEMPLATES AND IG AND
GE MODELS, OPTIONAL SECTION E. #
PROVISIONS, INCORPORATION OF
REQUIRED CLAUSES FOR FEDERAL
AWARDS**

REQUEST: Add Federal Equal Opportunity Clause, Federal Equal Opportunity Clause for Federally Assisted Construction Contracts, Davis-Bacon Act and Copeland Anti-Kickback Act, and Contract Work Hours and Safety Standard Act as optional Section E provisions to all grant templates and models, as follows:

Equal Opportunity

Add the following Section only if the Grantee is receiving a federal award.

- E.#. Equal Opportunity. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.

Equal Opportunity for Federally Assisted Construction Contracts

Add the following section only if the Grantee is receiving a federal award and the contract provides for federally assisted construction.

- E. #. Federal Equal Opportunity Clause for Federally Assisted Construction Contracts. As a condition for receipt of grant funds, the Grantee agrees to comply with 41 C.F. R. § 60-1.4 as that section is amended from time to time during the term.

Davis-Bacon Act and Copeland Anti-Kickback Act

Add the following section only if the Grantee is receiving a federal award and the contract involves construction.

- E. #. Davis-Bacon Act and Copeland Anti-Kickback Act. As a condition for receipt of grant funds, the Grantee agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and the Copeland Anti-Kickback Act at 18 U.S.C § 874 et seq., as those sections are amended from time to time during the term.

Contract Work Hours and Safety Standard Act

Add the following section only if the Grantee is receiving a federal award in excess of one hundred thousand dollars (\$100,000) and mechanics and laborers will be employed in construction work under the contract. This section does not apply to the purchases of supplies and materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

E. #. Contract Work Hours and Safety Standard Act. As a condition for receipt of grant funds, the Grantee agrees to comply with the Contract Work Hours and Safety Standard Act at 40 U.S.C. § 3701 et seq., as that section is amended from time to time during the term.

**CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2013-007, *GRANT
MANAGEMENT AND SUBRECIPIENT
MONITORING POLICY AND
PROCEDURES*, SECTION 4, GRANTEE
SELECTION PROCESS –
INCORPORATION OF PROCUREMENT
STANDARDS, 2 C.F.R §§ 200.317 TO
200.326**

REQUEST: Revise Section 4 of the *Central Procurement Office Grant Management and Subrecipient Monitoring Policy and Procedures, Policy Number 2013-007* as follows:

4. Grantee Selection Process.

Competition is encouraged with all Grantee selections. On the Grant Contract's cover sheet, the Grantor State Agency shall identify whether the Grantee selection process was competitive or non-competitive. For a non-competitive selection, the Grantor State Agency shall provide reasons for the non-competitive selection. For a competitive selection, the Grantor State Agency shall provide a summary of the Grantee selection process to the Central Procurement Office.

For any contracts that include any federal grant funds, all non-Federal entities receiving such grant funds must comply with all requirements of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326.

**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. 763.19c
Service: Janitorial Services
Agency/Location: Tennessee Military Department, Tennessee Army National Guard, 117th Regional Training Institute, Building 603, Smyrna, Tennessee.
Annual Price: \$15,265.92 annually, or \$1.827816 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 01/01/2018 – 12/31/2018

2. Item No. 763.A164
Service: Janitorial Services
Agency/Location: Tennessee Military Department, Tennessee Emergency Management Agency, 1510 R.E. Bailey Bypass, Jackson, Tennessee.
Annual Price: \$ 6,674.40 annually, or \$ 1.0303 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 01/01/2018 – 12/31/2018

3. Item No. 763.A178
Service: Janitorial Services
Agency/Location: Tennessee Department of Safety and Homeland Security, Tennessee Highway Patrol, Truck Inspection Site (I-65 North), 5753 Highway 31W, Portland, Tennessee.
Annual Price: \$ 6,084.29 annually, or \$ 2.03 per square foot per year.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 01/01/2018 – 12/31/2018

ADDENDUM

1. Item No. 763.54
Service: Janitorial Services

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

Agency/Location: Tennessee Department of Transportation, TDOT Region 3 Complex, 6601 Centennial Boulevard, Nashville, Tennessee.

Annual Pricing: \$ 196,850.30 annually, or \$1.8613 per square foot per year. Specifying the buildings on the TDOT Region 3 campus to be serviced as a part of the contract's 105,762 square feet.

No price increase requested.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 05/01/2017 – 04/30/2018.

2. Item No. 763.A180

Service: Janitorial Services

Agency/Location: Tennessee Department of Transportation, TDOT Region 3 Buildings A, C, & E, 6630 Centennial Boulevard, Nashville, Tennessee.

Annual Price, Bldg "A": \$2,320.98 annually, or \$2.3026 per square foot per year.

Annual Price, Bldg "C": \$2,320.98 annually, or \$2.3026 per square foot per year.

Annual Price, Bldg "E": \$2,320.98 annually, or \$2.3026 per square foot per year.

Specifying that TDOT will provide all expendables as a part of the contractual services.

No price increase requested.

Satisfaction: No complaints have been filed.

Re-Certification Requested for Period of 11/01/2017 – 10/31/2018.

LIMITATION OF LIABILITY REPORT

**Approved Limitation of Liability Requests
for the Time Period December 1, 2017 to February 1, 2018**

| TRACKING | CALENDAR YEAR | ID | LOGGED | STATUS | STATUS DATE | SERVICE | CONTRACTING AGENCY | BASIS FOR REQUEST | COT APPROVAL OF REQUEST |
|-------------|---------------|-------|-----------|----------|-------------|------------------------|--------------------|---|-------------------------|
| 32801-57311 | 18 | 10109 | 1/10/2018 | APPROVED | 1/11/2018 | SOFTWARE & MAINTENANCE | TWRA | In accordance with Tenn. Code Ann. Sec. 12-3-701, the Contractor's liability for all claims, suits, actions and proceedings howsoever arising, directly or indirectly, under or relating to the Contract or its subject matter, including those based on breach or rescission of contract, tort, breach of trust, or breach of fiduciary duty shall not exceed, in the aggregate one (1) times the Maximum Liability amount detailed in the Contract and as may be amended. | 1/16/2018 |

CORRECTION OF ERRORS REPORT

Request to correct errors:

(1) Update the website links provided in the *Procurement Procedures Manual of the Central Procurement Office* as follows:

- Section 1.2. from: www.tn.gov/generalservices/section/central-procurement-office to: <https://www.tn.gov/generalservices/procurement.html>
- Section 4.2. from: <http://www.tn.gov/generalservices/section/central-procurement-office> to: <https://www.tn.gov/generalservices/procurement.html>
- Section 10.1. from: <http://www.tennessee.gov/generalservices/article/godbe-enterprise-directory> to: <https://www.tn.gov/generalservices/procurement.html>
- Section 10.5. from: <http://tn.gov/generalservices/section/central-procurement-office> to: <https://www.tn.gov/generalservices/procurement.html>

(2) Update the website links provided in the Request for Proposals (RFP) Template as follows:

- Section 1.4.2.2. from: <http://www.tn.gov/generalservices/article/godbe-general-contacts> to: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html>
- Section 1.4.7. from: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities> to: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-/request-for-proposals--rfp--opportunities.html>
- Section 1.4.2.2. from: <http://www.tn.gov/generalservices/article/Public-Information-library> to: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

(3) Update the website links provided in the Request for Qualifications (RFQ) Template as follows:

- ATTACHMENT E.10. From: <http://www.tn.gov/generalservices/article/Public-Information-library> to: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/library-/public-information-library.html>

(4) Update the website links provided in the Fee for Goods or Services (FA) Template as follows:

- Summary Cover Sheet from: <http://tn.gov/generalservices/article/godbe-program-eligibility> to: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>
- E.# Contractor Hosted Services and Confidential Data. Section a.(4) from: <https://www.tn.gov/assets/entities/finance/oir/attachments/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf> to: <https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>

(5) Update the Fee for Goods or Services (FA) Template as follows:

- E.#. Federal Funding Accountability and Transparency Act (FFATA), Section a.(1)iii. From: (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- To: (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(6) Update the Fee for Goods or Services (FA) Template as follows:

- D.18. (and wherever else in the Template such misaligned formatting occurs) from: Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
to: Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

(7) Update the Grant Contract (GR) Template as follows:

- First ATTACHMENT – GRANT BUDGET footnote 1 (appears twice) from: <http://www.tn.gov/finance/topic/fa-policyinfo>
to: https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/policy3.pdf
- E.#. Security Audit. from: <http://tn.gov/finance/topic/sts-security-policies>
to: <https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>
- GRANT BUDGET from: <http://www.tn.gov/finance/topic/fa-policyinfo>
to: https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/policy3.pdf

(8) Update the Governmental Grant Contract (GG) Template as follows:

- First ATTACHMENT – GRANT BUDGET footnote 1 (appears twice) from: <http://www.tn.gov/finance/topic/fa-policyinfo>
to: https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/policy3.pdf
- E.#. Security Audit. from: <http://tn.gov/finance/topic/sts-security-policies>
to: <https://www.tn.gov/content/dam/tn/finance/documents/Enterprise-Information-Security-Policies-ISO-27002-Public.pdf>

- GRANT BUDGET from: <http://www.tn.gov/finance/topic/fa-policyinfo>
to: https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/policy3.pdf

(9) Update the RV Model as follows:

- Summary Cover Sheet from: <http://tn.gov/generalservices/article/godbe-program-eligibility>
to: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

Explanation of errors:

- (1) The TN.gov website was recently updated and the links changed and therefore need to be updated accordingly.
- (2) The TN.gov website was recently updated and the links changed and therefore need to be updated accordingly.
- (3) The TN.gov website was recently updated and the links changed and therefore need to be updated accordingly.
- (4) The TN.gov website was recently updated and the links changed and therefore need to be updated accordingly.
- (5) The U.S. federal agency the U.S. Securities and Exchange Commission is incorrectly referred to as the U.S. Security and Exchange Commission.
- (6) The provision, as well as other provisions in the Template, contain misaligned formatting errors and need to be amended to aid in Contract editing.
- (7) The TN.gov website was recently updated and the links changed and therefore need to be updated accordingly.
- (8) The TN.gov website was recently updated and the links changed and therefore need to be updated accordingly.
- (9) The TN.gov website was recently updated and the links changed and therefore need to be updated accordingly.

Procurement Staff signatures:

Shannon Howell by Michael F. Pez 2/15/18
Shannon Howell, Deputy Chief Procurement Officer Date

Buddy Lea 1/31/18
Buddy Lea, Assistant Commissioner of the Department of Finance & Administration Date

Donald Ivancic 1/31/2018
Donald Ivancic, Legislative Procurement Compliance Manager, Comptroller of the Treasury Date

MEMORANDUM OF UNDERSTANDING REPORT

| Number | SWC# / Edison Contract # | Contract Name | Category Specialist / Sourcing Analyst | Vendor Name | Description | MOU Active Date | Items Added via MOU |
|--------|--------------------------|---|--|--------------------------|--|-----------------|---|
| 127 | 40589 | SWC 222 Vehicle Leasing | Kelly Johns | ACME Auto Leasing | Additional Vehicle Types have been added | 12/13/2017 | mid-size hybrid |
| 128 | 40589 | SWC 222 Vehicle Leasing | Kelly Johns | ACME Auto Leasing | Additional Vehicle Types have been added | 12/13/2017 | mid-size SUV |
| 129 | 40589 | SWC 222 Vehicle Leasing | Kelly Johns | ACME Auto Leasing | Additional Vehicle Types have been added | 12/13/2017 | small SUV |
| 130 | 40589 | SWC 222 Vehicle Leasing | Kelly Johns | ACME Auto Leasing | Additional Vehicle Types have been added | 12/13/2017 | mid-side sedan |
| 131 | 40589 | SWC 222 Vehicle Leasing | Kelly Johns | ACME Auto Leasing | Additional Vehicle Types have been added | 12/13/2017 | small crossover |
| 132 | 40589 | SWC 222 Vehicle Leasing | Kelly Johns | ACME Auto Leasing | Additional Vehicle Types have been added | 12/13/2017 | full-size SUV Cloth |
| 133 | 40589 | SWC 222 Vehicle Leasing | Kelly Johns | ACME Auto Leasing | Additional Vehicle Types have been added | 12/13/2017 | full-size SUV Leather |
| 134 | 55125 | SWC 161 Trash Pick-Up Services | Jordan Green | Republic Services | Trash Pick-Up, Lauderdale County | 11/27/2017 | Trash Pick-Up (R4), 40 Cu Yd Compactor, Pick-up, Lauderdale County |
| 135 | 55125 | SWC 161 Trash Pick-Up Services | Jordan Green | Republic Services | Trash Pick-Up, Lauderdale County | 11/27/2017 | Trash Pick-Up (R4), 40 Cu Yd Compactor, Rental, Lauderdale County |
| 136 | 55125 | SWC 161 Trash Pick-Up Services | Jordan Green | Republic Services | Trash Pick-Up, Lauderdale County | 11/27/2017 | Trash Pick-Up (R4), 40 Cu Yd Compactor, per ton, Lauderdale County |
| 137 | 53430 | SWC 370 Uniform, Linen, and Dust Control Rental Service | Jessica Starling | Aramark Uniform Services | Dust Control Rental | 10/1/2017 | 3"x4" Scraper Mat |
| 138 | 56900 | SWC 104 Checkpoint Body Scanners | Lindsey Lattner | Ceia USA | Walk Through Metal Detector | 1/25/2018 | Walk Through Metal Detector, 60 Independent Zones, Column Design, Includes Installation and delivery - PMD2 Plus Elliptic |