



STATE OF TENNESSEE
PROCUREMENT COMMISSION
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- AGENDA -

PROCUREMENT COMMISSION MEETING #036
THURSDAY, FEBRUARY 20, 2020, 2:00 p.m.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM

Agenda Item	
I.	Call to Order
II.	Approval of Minutes from November 14, 2019 Meeting (see attached documentation).....
III.	Consent Agenda Items: (1) Conflict of Interest (RFQ and RFP Templates)
	New Business: Proposed changes to the following Central Procurement Office documents (see attached documentation): (1) E.#. Capital Asset (Optional GR and GG, TDOT) (2) Solicitation Notice and Nondisclosure Agreement Model..... (3) A.#. MyTN.Gov Integration (4) Policy Number 2013-007 Grant Management and Subrecipient Monitoring Policy and Procedures (5) GR and GG Cover Sheet (6) Tennessee Procurement Commission Bylaws and Rules of Procedure, Amendment 4.....
	Reports: (see attached documentation) (1) Certification Related Items (CMRA)..... (2) Limitation of Liability (3) Memorandum of Understanding (MOU) (4) Correction of Errors
	Other Business Consent to Cancel March 19, 2020 Procurement Commission Meeting - next meeting would be April 16, 2020.....
	Adjournment

STUART MCWHORTER
 Commissioner of Finance & Administration

JUSTIN P. WILSON
 Comptroller of the Treasury

CHRISTI BRANSCOM, Chairman
 Commissioner of General Services

MICHAEL F. PERRY
 Chief Procurement Officer

**MINUTES OF NOVEMBER 14, 2019
MEETING**

MINUTES
PROCUREMENT COMMISSION MEETING #035
THURSDAY, November 14, 2019, 2:00 p.m.
TN TOWER, 3RD FLOOR, NASHVILLE ROOM

Members in Attendance:

Justin P. Wilson, Comptroller of the Treasury; Christi W. Branscom, Commissioner, Department of General Services; Mike Perry, Chief Procurement Office; Stuart McWhorter, Commissioner, Department of Finance and Administration

Others in Attendance:

Buddy Lea, Christy Allen, Bryan Chriske, Paul Krivacka, Jenny Young, Randy Dean, Kevin Wieck, Davis Nwankwo, Robin Upchurch, Shannon Howell, Karen Conway, Debi Moss, Tim Drown

I. Call to Order:

Commissioner Branscom called the meeting to order and recognized that a quorum of Procurement Commission ("Commission") members was present.

IV. Minutes from the July 18, 2019 Meeting:

Commissioner Branscom presented the July 18, 2019, minutes for approval. Commissioner McWhorter stated his office had reviewed minutes and moved adoption of the July 18, 2019 Procurement Commission meeting minutes as presented. Comptroller Wilson seconded the motion; whereupon the minutes were approved.

V. Consent Agenda Items.

Commissioner Branscom presented the Consent Agenda items (1) through (4) for approval. Mr. Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office stated he was available for any questions.

Commissioner Branscom asked if there were any comments or questions on any of the items on the consent agenda. Seeing none, Comptroller Wilson made a motion to approve Consent Agenda items (1) through (4). Commissioner McWhorter seconded the motion; whereupon Consent Agenda items (1) through (4) were approved.

VI. New Business:

Mr. Krivacka presented the following New Business agenda items:

Mr. Krivacka noted that there were (5) New Business items, some of which could be taken together. He stated that items (1) (2) and (3) were similar and he asked to take those items together. Comptroller Wilson asked to take items (1) and (3) together and item (2) separately. Mr. Krivacka agreed.

Mr. Krivacka proceeded to present agenda item (1) and (3):

(1) Rule Exception Request – Advance Payments

Mr. Krivacka summarized the following points with regard to the Rule Exception Request – Advance Payments proposal:

- These items relate to a new Rule Exception Request – solely for use with Advance Payments. The purpose of adding a new RER is to add the Department of Finance & Administration as an oversight approver to the workflow for the review of prepayment requests, particularly when the request involves federal funds.
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(3) Section C. Payment Methodology Grant Contract (“GR”) and Governmental Grant (“GG”) instructions

Mr. Krivacka summarized the following points with regards to the Section C. Payment Methodology Grant Contract (“GR”) and Governmental Grant (“GG”) instructions proposal:

- The instructions in the GR and GG contract templates have been slightly modified to clarify that procurement professionals should use the new RER for Advance Payments to justify advance payments, instead of the standard Rule Exception Request.
- Since F&A will be built into the workflow for the new RER for Advance Payments (and F&A is not built into the workflow for standard Rule Exception Requests) this clarification should reduce questions or any potential workflow issues.

Comptroller Wilson clarified that item (3) is instructions for item (1). Mr. Krivacka confirmed. Comptroller Wilson asked if these relate primarily to prepayment of grant contracts involving federal funds. Mr. Krivacka agreed and explained that F&A would not be part of the work flow for a fee for services contract.

Seeing no further discussion on agenda items (1) and (3), Comptroller Wilson made a motion to approve the Rule Exception Request – Advance Payments and Section C. Payment Methodology Grant Contract (“GR”) and Governmental Grant (“GG”) instructions as presented. The motion was seconded by Commissioner McWhorter. All members voted in favor – none opposed.

Mr. Krivacka proceeded to present agenda item (2):

(2) Option: Advance Payment – Software Licenses or Maintenance and Support Agreements

Mr. Krivacka summarized the following point with regard to the Option: Advance Payment –

Software Licenses or Maintenance and Support Agreements proposal:

- Adds a new optional payment term for use when an advance payment is required as a result of software licenses or maintenance and support agreements.

Comptroller Wilson asked if this option would only be included if the contract is exclusively for software licenses or maintenance support agreements. Mr. Krivacka agreed.

Seeing no further discussion on item (2), Comptroller Wilson made a motion to approve the Option: Advance Payment – Software Licenses or Maintenance and Support Agreements as presented. The motion was seconded by Commissioner McWhorter. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda items (4):

(4) Grant Contract (“GR”) Template D.19. Audit Report

Mr. Krivacka presented the following points with regard to the Grant Contract (“GR”) Template D.19. Audit Report proposal:

- This request adds a requirement that the grantee submit a copy of the Notice of Audit Report, Parent Child Form, and Audit Report to the State Agency contact.
- The State Agency has the flexibility to provide the appropriate contact information.
- This is the first of many steps the Central Procurement Office will take to address audit findings from this past Sunset Audit.

Seeing no discussion on agenda items (4), Comptroller Wilson made a motion to Grant Contract (“GR”) Template D.19. Audit Report as presented. The motion was seconded by Commissioner McWhorter. All members voted in favor – none opposed.

(5) South Central Human Resource Agency Procurement Policies and Procedures Manual for PC Approval

Mr. Krivacka presented the following points with regard to the *South-Central Human Resource Agency Procurement Policies and Procedures Manual* for PC Approval proposal:

- South Central Human Resource Agency (“SCHRA”) was established pursuant to the Human Resource Agency Act of 1973, as amended, as a not-for-profit delivery system designed to implement human services programs. SCHRA is empowered to own and dispose of property both real and personal and to receive and administer funds and contributions from private and public sources which may be used in support of human resource programs, and other funds under State and Federal assistance programs.

Mr. Krivacka stated that the policies and procedures that were submitted by SCHRA were reviewed by Central Procurement Office. The Central Procurement Office sent the first submission back to SCHRA for changes. SCHRA made all changes requested by the Central Procurement Office. Approval of the SCHRA procedures are now before the Procurement Commission.

Commissioner McWhorter asked what was being done prior to these policies and procedures. Mr. Krivacka responded that he believes SCHRA was working under a set of legacy policies and procedures prior to the Procurement Commission becoming an official commission of the state. Commissioner McWhorter asked if there were any concerns with the previous policies and procedures and if this is just more of an update. Mr. Krivacka confirmed that this was an update and Central Procurement Office does not have any concerns. SCHRA appear to follow good practices with respect to procurement.

Mr. Perry mentioned that the previous body to the Procurement Commission, The Board of Standards, would have been the State agency with prior approval authority over SCHRA's procedures.

Seeing no discussion on agenda items (5), Commissioner McWhorter made a motion to South Central Human Resource Agency Procurement Policies and Procedures Manual for PC Approval as presented. The motion was seconded by Comptroller Wilson. All members voted in favor – none opposed.

IV. Reports:

Mr. Krivacka presented the following standard reports for acknowledgement and for informational purposes:

- 1) Certification Related Items
- 2) Limitation of Liability
- 3) Memorandum of Understanding (MOU)

Mr. Krivacka stated that there are a couple of corrections that he wanted to address before getting into the reports. The certification reports had an error on the letterhead footing. The letterhead needs to be updated to reflect Mr. Stuart McWhorter as Commissioner of Finance and Administration. On the Limitation of Liability report, there were two items requiring correction that were brought to Central Procurement Office's attention by the Comptroller of the Treasury. The first items was CY19-13495. The service should be software maintenance and support services for patient tracking, billing, and management information systems and the agency should be the Department of Health. The next correction is CY19-13590. The Central Procurement Office wanted to clarify that it should read "in no event shall this section limit the liability of the contractor for any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in damage to either the current facility or the new facility".

V. Other Business:

Mr. Krivacka discussed one of the Sunset audit findings related to Procurement Commission and the Tennessee Procurement Commission Bylaws and Rules of Procedure, which is the consideration of addition a conflict of interest statement for the members of the Procurement Commission. Mr. Krivacka proposed meeting with Procurement Commission staff to draft proposed changes to the Bylaws that would adopt a Conflict of Interest ("COI") form to be signed by each member on an annual basis. Mr. Krivacka proposed that the COI forms completed by each member would be filed

with the Chief Procurement Officer, who is the secretary for the Procurement Commission. At the next meeting, Mr. Krivacka proposed bringing the Bylaw change and the COI form to the Procurement Commission at its January meeting.

Commissioner Branscom asked when the next meeting in January would be and then stated that is when the Procurement Commission would be considering the update to the bylaws. Mr. Krivacka confirmed and mentioned that the Advisory Council on State Procurement also has the same audit finding. The Advisory Council will also be adopting a conflict of interest policy. The Advisory Council does not have bylaws, so the Advisory Council will adopt bylaws, a conflict of interest provision within the bylaws, and a form of conflict of interest disclosure.

Mr. Krivacka provided one last update. The Sunset Audit had a finding relative to the CPO Grant Management program. The proposals approved at this Procurement Commission addresses some of the finding. There are several other proposals for which the Central Procurement Office will seek approval over the next several weeks. Mr. Krivacka said he hopes that by the January meeting, the Central Procurement Office will have most of the changes to its policies and procedures that will address all the audit findings.

Consent to Cancel the December 19, 2019 Procurement Commission Meeting:
Comptroller Wilson, Commissioner Branscom and Commissioner McWhorter gave their verbal consent to cancel the December 19, 2019 Procurement Commission meeting. This means that the next meeting will be January 16, 2020.

VI. Adjournment:

Seeing no other business, a motion for adjournment was made by Commissioner Branscom and seconded by Comptroller Wilson. All members voted in favor – none opposed; whereupon the November 14, 2019 Procurement Commission meeting was adjourned.

**CONFLICT OF INTEREST
(RFQ AND RFP TEMPLATES)**

REQUEST: Revise the Request for Qualifications (“RFQ”) Template and Request for Proposals (“RFP”) Template as follows:

RFQ Template:

4.3. Conflict of Interest

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

RFP Template:

- 3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:
 - 3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - 3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - 3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.3.9. This RFP is also subject to Tenn. Code Ann. § 12-4-101—105.

**E.#. CAPITAL ASSET
(OPTIONAL GR AND GG, TDOT)**

REQUEST: Revise the optional E.#. language for the Tennessee Department of Transportation provided in the Grant Contract (GR) and Governmental Grant (GG) Templates as follows:

E.#. Capital Asset. The Grantee shall:

- (a) Use one or more vehicles, equipment, or facilities ("Capital Asset") acquired under this Grant Contract only for the purposes and the manner set forth in the Grantee's application.
- (b) Certify at the beginning of each calendar year, that the Capital Asset acquired under this Grant Contract is still being used in accordance with the terms and provisions of this Grant Contract.
- (c) Pay all fees on the Capital Asset acquired through this Grant Contract, including but not limited to title and registration fees.
- (d) Be responsible for all costs and expenses related to the operation, maintenance, and repair of the Capital Asset acquired through this Grant Contract.
- (e) Provide licensed drivers, as required by the Tennessee Department of Safety and Homeland Security, for operation of all vehicles or equipment received under this Grant Contract.
- (f) Carry insurance on Capital Assets sufficient to cover the State interest, and the Federal interest if applicable, in the Capital Asset.
 - 1. If the Grantee is governed by the Tennessee Governmental Tort Liability Act (Tenn. Code Ann. § 29-20-101 et seq.), then the following insurance coverage is required:
 - a) Bodily injury or death of any one person in any one accident, occurrence or act at a minimum of \$300,000.00 per person.
 - b) Bodily injury or death of all persons in any one accident, occurrence or act at a minimum of \$700,000.00 per accident.
 - c) Injury to or destruction of property of others in any one accident at a minimum of \$100,000.00.
 - 2. If the Grantee is not governed by the Tennessee Governmental Tort Liability Act, then the following insurance coverage is required:
 - a) Personal Injury Liability – minimum of \$300,000.00 per person and \$1,000,000.00 per incident.
 - b) Property Damage Liability – minimum of \$300,000.00 per incident.
 - c) Comprehensive – maximum deductible of \$500.00.
 - d) Collision – maximum deductible of \$500.00.
 - e) Uninsured Motorist – minimum of \$50,000.00 per person and \$100,000.00 per incident.
 - 3. Additionally, if applicable, the Grantee shall comply with the provisions of Section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), with respect to any project activity involving construction or an acquisition having an insurable cost of \$10,000.00 or more.

This insurance shall be in effect at all times while the Capital Asset is used for public transportation services or service vehicle purposes in operations. The Grantee shall furnish

the State with evidence of such insurance at the time the Capital Asset is delivered to the Grantee and annually on the anniversary date of the delivery of the Capital Asset. Upon demand by the State, the Grantee shall provide proof of insurance at any time during the term of useful life of the Capital Asset.

- (g) Ensure that any vehicles received under this Grant Contract will comply with the Federal Motor Vehicle Safety Standards ("FMVSS") as established by the United States Department of Transportation.
- (h) Ensure that any Capital Asset received under this Grant Contract shall be used for not less than the useful life, except with the State's prior written approval. The useful life of all Capital Assets purchased under the Grant Contract is as listed in the grant document filed with the Federal Transit Administration ("FTA"). Upon reaching the expiration of the useful life of the Capital Asset, the State may ask the Grantee to provide written notice to the State.

**SOLICITATION NOTICE AND
NONDISCLOSURE AGREEMENT
MODEL**

Agency Letterhead

SOLICITATION NOTICE

INSERT DATE

Service Providers:

The State of Tennessee is issuing a solicitation to provide **GOODS OR SERVICES CAPTION** to the State. Please note the following solicitation highlights:

SOLICITATION ID #	
Scope of Goods or Service	
Procuring State Agency	
Response Deadline	
Solicitation Coordinator Contact Information	

This solicitation is unique in that it has been identified by the Department of Finance and Administration, Strategic Technology Solutions as containing information that is confidential under Tenn. Code Ann. § 10-7-504(i). Therefore, a non-disclosure agreement must be signed before the solicitation details may be disclosed by the State.

If you are interested in responding to this solicitation, please complete the attached non-disclosure agreement and return it to the Solicitation Coordinator. The above solicitation includes a document on "[How to Register to do Business with the State of Tennessee](#)." Please note that it can take approximately 10-14 days to become registered. We appreciate your interest in doing business with the State of Tennessee and hope that you will consider responding to this solicitation.

THE STATE OF TENNESSEE
NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement for <INSERT SOLICITATION NUMBER> (hereinafter referred to as the "Agreement") is effective upon signature by the SUPPLIER LEGAL ENTITY NAME (Supplier having its principal place of business at SUPPLIER'S ADDRESS ("Supplier")). The Supplier agrees as follows:

1. Materials, records, notes, logs, diagrams, drawings and any other information or records, regardless of form, medium or method of communication, provided to the Supplier by the State or acquired by the Supplier on behalf of the State, as well as all information derived or resulting from merges, matches, or other uses of the information shall be regarded as Confidential State Data. Confidential State Data shall also include, but shall not be limited to:

- (i) electronic information processing systems, telecommunications systems, or other communications systems of the State (collectively, "Government Property");
- (ii) plans, security codes, passwords, combinations, or computer programs used to protect electronic information and Government Property;
- (iii) information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity;
- (iv) information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or Government Property; and
- (v) the identity of another Supplier providing goods and services to the State that are used to protect electronic information processing systems, telecommunication and other communication systems, data storage systems, government employee information, or information related any person or entity.

2. The Supplier shall safeguard and hold in strict confidence all Confidential State Data and shall not disclose the Confidential State Data to third parties without the written consent of the State. The Supplier shall further restrict disclosure of Confidential State Data to only those employees who have a need to know and who have executed a nondisclosure agreement to protect the Confidential State Data with terms equivalent to this Agreement.

3. Nothing in this Agreement shall permit the Supplier to disclose any Confidential State Data, regardless of whether it has been disclosed or made available to the Supplier due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential State Data shall not be disclosed except as required under state or federal law. To the fullest extent allowable under applicable law or regulation, the Supplier shall promptly notify and provide to the State a reasonable opportunity to oppose any disclosure required under state or federal law.

4. The Supplier acknowledges that Confidential State Data delivered by the State to the Supplier shall be for the purpose of exploration of business opportunities involving the State and the Supplier. No other use of the Confidential State Data is granted without the written consent of the State. In the event the State gives its approval for the Supplier to disclose Confidential State Data to a third party, the Supplier shall ensure that all such disclosures are marked with appropriate legends, the receiving third party enters into a non-

disclosure agreement to protect Confidential State Data with terms as least as protective as those contained this Agreement, and any other conditions reasonably required by the State in order to preserve the confidential nature of the information and the State's rights therein.

5. All obligations set forth under this Agreement shall survive any termination of this Agreement. Upon termination, the Supplier shall promptly destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology Special Publication 800-88.

6. This Agreement shall not be construed as a teaming, joint venture or other such arrangement; rather, the parties hereto expressly agree that this Agreement is for the purpose of protecting Confidential State Data only.

7. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Agreement shall not be affected and shall remain in full force and effect. The terms and conditions of this Agreement are severable.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Agreement. The Supplier acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.

9. Nothing in this Agreement shall be construed to convey to Supplier any right, title or interest or copyright in the Confidential State Data, or any license to use, sell, exploit, copy or further develop the Confidential State Data.

10. This Agreement is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Agreement may only be modified by a written amendment signed by the Supplier and approved by all applicable State officials.

IN WITNESS WHEREOF, this Agreement has been executed by the Supplier and is effective as of the date signed below:

INSERT SUPPLIER LEGAL ENTITY NAME

By: _____
Name: _____
Title: _____
Date: _____

A.#. MYTN.GOV INTEGRATION

REQUEST: Add the following to the Edison document configurator and to the Fee for Goods or Services Contract Template (FA) instructions, considerations, and options as follows:

Option: MyTN.gov Integration

If the Contract involves software: (1) add the following MyTN.gov Integration term to Section A. Scope; **and** (2) add the Additional Lines, Items, or Options contract term to Section E.#. Special Terms and Conditions

A.#. MyTN.gov Integration.

- a. The State may require the software developed or provided by the Contractor under this Contract to integrate with the State's customer-facing portal, MyTN.gov. Such integration may occur at any time during the Term of the Contract. If so, the Contractor may have to comply with one, or more, of the following integration requirements:
 - (1) All web applications must be Responsive. "Responsive" is an industry standard term that refers to a web design that makes web pages render well on a variety of devices and window or screen sizes.
 - (2) All web applications must have the capability to use a single-sign on server utilizing the following industry standard protocols: Security Assertion Markup Language ("SAML") or minimum of OAuth 2.0.
- b. Any of the obligations in Section A.#.a that were known and required prior to Contract Effective Date will be specified herein, including necessary compensation methods and amounts.
- c. For any of the obligations in Section A.#.a that were unknown or not required at Contract Effective Date, it will be necessary to add lines, items, or options to the Contract to accommodate one or more of the new integration requirements. The State shall add these lines, items, or options in accordance with the MOU process described in Section E.#, below. If the Contractor requires additional compensation for the integration tasks, such compensation shall be negotiated and specified through this same MOU process.

**POLICY NUMBER 2013-007 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: February 20, 2020
Prepared by: The Central Procurement Office of the State of Tennessee

1. Purposes.

To provide guidance to assist State Agencies to determine a counter party's status as a Contractor, Recipient, or Subrecipient.

To provide uniformity in the reporting of, and controls over, the expenditure of Grant funds in connection with the delivery of services by Recipients and Subrecipients.

To establish guidelines for Recipient and Subrecipient monitoring by Grantor State Agencies.

2. Scope.

This Policy applies to all State Agencies that award Federal or State Grants to Recipients or Subrecipients. Direct Appropriation Grants are exempt from this Policy.

3. Definitions.

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

“Central Procurement Office” - means the State office established and empowered by Tenn. Code Ann. § 4-56-104.

“Chief Procurement Officer” - means the official as defined by Tenn. Code Ann. § 4-56-104.

“Cognizant State Agency” - means the State Agency whose funds comprise the greatest percentage of Grants received by a Grantee as determined by the Central Procurement Office.

“Contract” - means any duly authorized and legally binding written agreement or purchase order for goods or services by and between the State of Tennessee and any person or any separate entity with the independent legal capacity to contract and sue and be sued. The term “Contract” shall also have the meaning ascribed to it in 2 CFR § 200.22.

“Contractor” – means an entity that receives a Contract as defined in this Policy and in the U.S. OMB’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

“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.

“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 a Grant 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.

“Federal Grant” -means a Grant that is funded in whole or in part through federal funds.

“Grant”- means any grant of money, loans, or non-cash assistance 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. A Grant cannot be used for the primary purpose of procuring an end product, whether in the form of supplies, services, or construction, or any contract resulting from such a Grant 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 the duly authorized and legally binding written agreement by and between the State of Tennessee and Recipient or Subrecipient that contains the terms and conditions governing the parties’ duties and responsibilities with respect to a Grant. A Grant Contract does not include a Contract for the purchase of goods or services for the State of Tennessee’s own use or consumption.

“Grantee”- means the person or entity receiving a Grant as a Recipient or Subrecipient.

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

“Policy” - means Policy Number 2013-007 of the Central Procurement Office.

“Recipient” - means a Grantee that is a recipient of a Grant. The term Recipient does not include a Subrecipient.

“State”- means the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

“State Agency” - means the departments, agencies, and entities of the State of Tennessee.

“State Grant” - means a Grant that is funded exclusively through State funds.

“Subrecipient”- means a non-federal entity that receives a Grant from a pass-through entity to carry out part of a federal program, but excludes the beneficiary of such program. A Subrecipient may also be a recipient of other Federal Grants directly from a federal awarding agency.

4. **Determination of a Contractor, Recipient, or Subrecipient.**

A State Agency must make case-by-case determinations whether each Grant it makes for the disbursement of federal or State program funds casts the party receiving such funds in the role of a Contractor, Recipient or Subrecipient.

When determining whether an agreement creates a Contractor, Recipient, or Subrecipient relationship, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed below may not be present in all cases, and the State Agency must use its judgment in classifying each agreement as creating either a Grantee or Contractor relationship. The U.S. OMB’s *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* provides guidance on how to distinguish between a Subrecipient and a Contractor in 2 C.F.R. § 200.330.

4.1 Contractor – A contract for goods and services that creates a State-Contractor relationship is typically one for the purpose of obtaining goods or services for the State Agency’s own use and consumption.

The characteristics that support the classification of an entity as a Contractor includes whether the entity:

- Provides the goods or services within its normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of a state or federal program; and
- Is not subject to compliance requirements of the state or federal program as a result of the agreement at issue, though similar requirements may apply for other reasons.

If the non-federal entity is a Contractor, the State Agency must ensure that the procurement, receipt, and payment for goods and services complies with applicable state and federal laws, regulations, and policies that apply to the procurement of goods and services, following one of the approved methods for awarding a Contract (e.g., *CPO Policy 2013-004-Contract Management Policy and Procedures*).

If the Grantor State Agency determines that a Contractor relationship exists, they would not use a Grant Contract model or template.

4.2 Recipient – A Recipient receives a State Grant from the State for the purpose of carrying out a portion of a State Grant.

The characteristics that support the classification of an entity as a Recipient include

whether the entity:

- Determines who is eligible to receive State assistance;
- Has its performance measured in relation to whether objectives of a State program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable State program requirements specified in the State Grant; and
- In accordance with the agreement at issue, uses the State financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

For any entity determined to be a Recipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.

4.3 Subrecipient – A Subrecipient receives a Federal Grant from the State for the purpose of carrying out all or a portion of a Federal Grant creating a federal assistance relationship with the Subrecipient.

The characteristics that support the classification of an entity as a Subrecipient include whether the entity:

- Determines who is eligible to receive federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision making;
- Is responsible for adherence to applicable federal program requirements specified in the Federal Grant; and
- In accordance with the agreement at issue, uses the federal financial assistance to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the State Agency.

For any entity determined to be a Subrecipient, the Grantor State Agency must comply with the monitoring requirements in Section 9 of this Policy.

5. Documentation of Grantee Selection Process.

The Grantor State Agency shall document the Grantee selection process. The Grantor State Agency shall provide a summary of the Grantee selection process to the Central Procurement Office.

6. Alternative Payment Methodologies.

Any Grantor State Agency seeking to use the partial, periodic, or total advance payment language contained in the Grant templates must submit a Rule Exception Request – Advance Payments, justifying why using that language would be in the best interests of the State. If a Grantor State Agency is advancing federal funds, the Grantor State Agency must ensure that the Grantee disburses those funds immediately in accordance with 2 C.F.R. § 200.305.

In accordance with 2 C.F.R. § 200.305, advance payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash

requirements of the Grantee (i.e., the Grantee's disbursement of allowable costs incurred) in carrying out the purpose of the approved program or project.

7. Cognizant State Agency Determination Process.

The Cognizant State Agency shall be responsible for approving the Recipient or Subrecipient's Cost Allocation Plan. Other State Agencies that grant funds to the Recipient or Subrecipient must abide by the Cost Allocation Plan approved by the Cognizant State Agency. The Cognizant State Agency is the State Agency whose funds comprise the greatest percentage of State Grant funds received by the Recipient or Subrecipient. The Central Procurement Office determines the Cognizant State Agency for each Recipient or Subrecipient. To provide for continuity of the Cognizant State Agency determination, the determination of the predominant amount of funding must be determined every five years. Once assigned, the term of responsibility shall continue until redetermined. A State Agency may submit to the Central Procurement Office a written request and justification for a Cognizant State Agency redetermination at any time during the five-year period. For example, if the State Agency no longer provides the greatest percentage of funds received by the Recipient or Subrecipient, they could request a redetermination prior to the five-year redetermination.

8. Cost Allocation Plans.

Cost Allocation Plans shall comply with the applicable accounting and financial standards, either Financial Accounting Standards Board ("FASB") standards or Governmental Accounting Standards Board ("GASB") standards. Recipients or Subrecipients shall submit any proposed Cost Allocation Plans to the Cognizant State Agency for approval. Methods used for allocating costs may differ between Recipients and Subrecipients. Once a Recipient or Subrecipient receives approval for its Cost Allocation Plan, all other Grantor State Agencies shall accept the approved Cost Allocation Plan. However, Grantor State Agencies are not required to fully fund the costs that are charged to a particular program under an approved Cost Allocation Plan if such costs are not allowable under the Grantor State Agency's agreement with the Recipient or Subrecipient or exceed the prescribed funding percentage or budgets.

8.1 Types of Costs.

8.1.1 Allowable Costs

The total cost of a Grant is the sum of the allowable direct and allocable indirect costs less any applicable credits. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Grant or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect cost in order to avoid possible double-charging of Grants.

Allowable costs must be reasonable for the performance of the Grant and allocable. Unallowable costs include:

- Alcoholic beverages

- Bad debts
- Contingencies
- Contributions and donations
- Entertainment
- Fines and penalties
- Fundraising and investment management
- Legal services related to claims against the federal government

8.1.2 *Allocable Costs*

A cost is allocable to a particular Grant or other cost objective if the goods or services involved are chargeable or assignable to that Grant or cost objective in accordance with relative benefits received. This standard is met if the cost:

- (1) Is incurred specifically for the Grant;
- (2) Benefits both the Grant and other work of the Recipient or Subrecipient and can be distributed in proportions that may be approximated using reasonable methods; and
- (3) Is necessary to the overall operation of the Recipient or Subrecipient and is assignable in part to the Grant.

8.1.3 *Direct Costs*

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Grant, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. 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.

8.1.4 *Allocable Direct Costs*

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

8.1.5. *Indirect Costs (facilities & administrative costs)*

Indirect costs are overhead or administrative costs incurred for joint purposes that cannot easily be allocated to a single use. 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; and
- Postage and telephone costs of administrative employees.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- (1) Administrative or clerical services are integral to a project or activity;
- (2) Individuals involved can be specifically identified with the project or activity;
- (3) Such costs are explicitly included in the budget or have the prior written approval of the federal awarding agency; and
- (4) The costs are not also recovered as indirect costs.

8.2 Cost Allocation.

8.2.1. *Allocation Methods*

Requirements for developing and submitting indirect cost rate proposals and Cost Allocation Plans are contained in Appendices III-VII of the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* as follows below. In the event that a federal requirement for cost rate proposals or Cost Allocation Plans conflicts with a state requirement, the federal requirement shall control.

- (1) Appendix III to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs): <https://www.ecfr.gov/cgi-bin/text->

[idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iii](https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iii)

(2) Appendix IV to Part 200—Indirect Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations; https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.iv

(3) Appendix V to Part 200—State/Local Government and Indian Tribe Central Service Cost Allocation Plans; https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.v

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans; https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vi

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals. https://www.ecfr.gov/cgi-bin/text-idx?SID=e93c4c33f5e7b3748124a284dd68aef9&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.vii

8.2.2. *Instructions for Cost Allocation Plans*

Each Recipient and 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 indirect costs. Allocable direct costs will be included with other direct costs of the program in reports to the Grantor State Agency. Allocations that are reported in separate line items on the grantor reports should involve the indirect 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.
- The Cognizant State Agency shall review proposed Cost Allocation Plans.

- 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.

9. Grantor State Agency Monitoring Requirements.

9.1 General Requirements for all Grant Contracts

All Grantor State Agencies must:

(a) Evaluate each Recipient or Subrecipient's risk of noncompliance with Federal and State statutes, regulations, and any applicable terms and conditions, for purposes of determining the appropriate monitoring described in paragraphs (b) and (c) of this section, which may include consideration of such factors as:

- (1) The Recipient or Subrecipient's prior experience with the same or similar Grants;
- (2) The results of previous audits including whether or not the Recipient or Subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, and the extent to which the same or similar Grant program has been audited as a major program;
- (3) Whether the Recipient or Subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of federal awarding agency monitoring (e.g., if the Recipient or Subrecipient also receives Federal Grants directly from a Federal awarding agency).

(b) Monitor the activities of the Recipient or Subrecipient as necessary to ensure that the Grant is used for authorized purposes, in compliance with Federal and State statutes, regulations, and any applicable terms and conditions; and that Grant performance goals are achieved. Grantor State Agency monitoring of Recipients and Subrecipients must include:

- (1) Receiving and reviewing financial and performance reports required by the Grantor State Agency.
- (2) Following-up and ensuring that the Recipients or Subrecipients take timely and appropriate action on all deficiencies pertaining to the Grant provided to the Recipient or Subrecipient from the Grantor State Agency detected through audits, on-site reviews, and

other means.

(3) Issuing a management decision for audit findings pertaining to the Federal Grant provided to the Subrecipient from the pass-through entity as required by 2 CFR § 200.521 Management decision.

(c) Depending upon the Grantor State Agency's assessment of risk posed by the Recipient or Subrecipient (as described in paragraph (a) of this section), the Grantor State Agency shall use these tools, when appropriate, to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing Recipients or Subrecipients with training and technical assistance on program-related matters;

(2) Performing on-site reviews of the Recipients or Subrecipients' program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in 2 CFR § 200.425 Audit services.

(d) Verify that every Subrecipient is audited as required by Subpart F—Audit Requirements of the U.S. OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* when it is expected that the Subrecipient's Federal Awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 Audit requirements.

The Grantor State Agency shall perform more frequent monitoring for Recipients or Subrecipients determined to be high-risk or if previous monitoring cycles revealed serious deficiencies. If federal Subrecipient monitoring requirements on monitoring frequency are more stringent than those under this Policy, the Grantor State Agency shall comply with the federal requirements.

The Grantor State Agency should assign risk to all Recipients or Subrecipients (e.g., in accordance with 2 C.F.R. § 200.331). At minimum, the Grantor State Agency's risk assignment process shall include the considerations identified in Section 9.2.2 below.

9.2 Annual Monitoring Plan

Each year, all State Agencies governed by this Policy shall develop and submit an annual monitoring plan for review and approval to the Central Procurement Office by October 1.

9.2.1. *Monitoring Plan Components*

The monitoring plan is a summary of the Grantor State Agency planned monitoring activities for the upcoming annual monitoring cycle and shall include:

- The total Grant Contracts population;
- The State Agency's monitoring cycle, e.g., the state or federal fiscal year;

- All Grant Contracts the State Agency will monitor during its monitoring cycle;
- A description of each State or Federal program to be monitored;
- Sample monitoring guides to be utilized for each monitored program;
- Full-time equivalents and personnel classifications for all staff dedicated to monitoring activities;
- A risk assessment for each Recipient or Subrecipient and its related contracts;
- An explanation of the criteria used to assign risk to Recipients or Subrecipients and their related contracts;
- An explanation of each finding from the previous monitoring cycle;
- An explanation of the State Agency's corrective action process for each finding; and,
- The most current list of all Subrecipients that have completed a Federal Single Audit.

9.2.2. *Determining the Population to be Monitored*

When selecting the population of Grant Contracts to be included in its annual monitoring plan, Grantor State Agencies shall consider:

- The Recipients or Subrecipients' risk of noncompliance with federal and State statutes, regulations, and any applicable terms;
- The level of programmatic or financial risk to the State; and,
- Whether the Recipient or Subrecipient has had prior findings indicating serious deficiencies.

9.2.3 *Monitoring Activities*

The Grantor State Agency's monitoring of the Recipients or Subrecipients identified in its annual monitoring plan shall include:

- Any program-specific monitoring requirements;
- All applicable requirements of Title VI of the *Civil Rights Act of 1964*;
- Reviewing any reports required by 2 C.F.R. §§ 200.328 – 200.329;
- Reviewing financial and programmatic reports required by the Grant Contract; and
- Ensuring that the Recipient or Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Grant that the Grantor State Agency detected and communicated to the Recipient or Subrecipient.

To the extent possible, there should be a separation of duties between monitoring staff and program operations staff to allow for independence and objectivity. Possible conflicts of interest should be disclosed in Grantor State Agency monitoring plans.

9.2.4 *Changes to Monitoring Plans*

A Grantor State Agency shall submit any proposed changes to an approved monitoring plan and an explanation for each proposed change to the Central Procurement Office for review and approval. The Grantor State Agency shall document any approved changes to an existing plan.

9.2.5 *Monitoring Reports and Corrective Action Plans*

Grantor State Agencies shall issue reports summarizing any findings or observations identified during monitoring activities within thirty (30) business days of completing all field work. The Grantor State Agency shall retain a copy of the monitoring report and distribute copies to the Grantee and the Comptroller of the Treasury, Division of State Audit.

Upon receipt of a monitoring report with findings, the Recipient or 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. The Grantor State Agency shall have thirty (30) business days to approve, reject, or request additional information about the Recipients or Subrecipients' plan. If a corrective action plan is not approved, the Grantor State Agency and the Recipient or Subrecipient shall work together to develop solutions for addressing the monitoring report's findings.

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.

11. Compliance Reviews.

State Agency records obtained under this Policy are subject to evaluation by the Chief Procurement Officer, 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.*

Tenn. Comp. R. & Regs. 0690-03-01-.17 (2)(t)

GR AND GG COVER SHEET

REQUEST: Revise the Grant Contract (“GR”) and Governmental Grant Contract (“GG”) Template coversheets as follows:

 <h2 style="margin: 0;">GRANT CONTRACT</h2> <p style="margin: 0;">(cost reimbursement grant contract with an individual, business, non-profit, or governmental entity of another state or country)</p>					
Begin Date		End Date		Agency Tracking #	Edison ID
					-
Grantee Legal Entity Name					Edison Vendor ID
Subrecipient or Recipient <input type="checkbox"/> Subrecipient <input type="checkbox"/> Recipient			CFDA # Grantee’s fiscal year end		
Service Caption (one line only)					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
TOTAL:					
Ownership/Control					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Service-Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Businesses (DSBE)					
<input type="checkbox"/> Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government		<input type="checkbox"/> Non-Minority/Disadvantaged		<input type="checkbox"/> Other:	
Grantee Selection Process Summary					
<input type="checkbox"/> Competitive Selection			Describe the competitive selection process used.		

<input type="checkbox"/> Non-competitive Selection	Describe the reasons for a non-competitive grantee selection process.
<p>Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.</p>	<p style="text-align: center;"><i>CPO USE - GR</i></p>
Speed Chart (optional)	



GOVERNMENTAL GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)

Begin Date	End Date	Agency Tracking # -	Edison ID		
Grantee Legal Entity Name			Edison Vendor ID		
Subrecipient or Recipient <input type="checkbox"/> Subrecipient <input type="checkbox"/> Recipient		CFDA #			
		Grantee's fiscal year end			
Service Caption (one line only)					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Grant Contract Amount
TOTAL:					
<hr/> <hr/>					
Grantee Selection Process Summary					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used.			
<input type="checkbox"/> Non-competitive Selection		Describe the reasons for a non-competitive grantee selection process.			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - GG</i>	
Speed Chart (optional)		Account Code (optional)			

**TENNESSEE PROCUREMENT
COMMISSION BYLAWS AND RULES OF
PROCEDURE, AMENDMENT 4**

TENNESSEE PROCUREMENT COMMISSION

BYLAWS AND RULES OF PROCEDURE

6/28/2012

AMENDMENT 1: ARTICLES V AND XV AMENDED ON 1/31/13

AMENDMENT 2: ARTICLE XIV AMENDED ON 2/20/14

AMENDMENT 3: ARTICLE V AMENDED ON 12/14/17

[AMENDMENT 4: ARTICLE VI AMENDED ON 02/20/20](#)

MISSION STATEMENT

To promote the efficient, fair, transparent, timely, and cost-effective procurement of goods and services and ensure proper management of contracts between proposers and the various departments, agencies, and commissions of the State of Tennessee with respect to procurement decisions.

ARTICLE I

NAME

The name of this organization shall be referred to herein as the “Tennessee Procurement Commission” or the “Commission.”

ARTICLE II

DUTIES AND RESPONSIBILITIES

The Commission shall have the duty and responsibility to review, comment, and approve rules and regulations, policies, standards, and procedures to be followed consistent with Title 4, Chapter 56 and Title 12, Chapters 3 and 4, and such other duties and responsibilities assigned to the Commission by the Tennessee General Assembly. The Commission shall also recommend changes to rules and regulations, policies, standards, and procedures governing the procurement of goods and services, contracting, agency contract and grant management, training and professional development, and disposal of goods and services by the State of Tennessee.

The Commission is further authorized to promulgate necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, Title 4, Chapter 5, as well as policies and procedures to implement its duties and responsibilities under Title 4, Chapter 56 of the Tennessee Code. The Commission shall not exercise authority over the award or administration of any particular contract or grant.

ARTICLE III

DOCUMENT GOVERNING PROCEEDINGS

These Bylaws and Rules of Procedure, referred to herein as the “Procedures”, shall govern all hearings, information items and matters for consideration or approval before the Commission.

ARTICLE IV

RECORD OF PROCEEDINGS

The Chief Procurement Officer shall keep a permanent and accurate record of all proceedings of the Commission.

ARTICLE V

FILING

All documents to be filed with the Commission for consideration or approval must be filed with and received by the Chief Procurement Officer at least fifteen (15) calendar days in advance of a Commission meeting by no later than 4:00 PM CST. Electronic filing by email with return receipt requested is recommended, but not required.

Any documents or issues submitted of a housekeeping nature will be put on the Consent Agenda, after review and approval by Commission staff. Commission members may vote on all items on the Consent Agenda collectively at one time. Members will vote on the Consent Agenda items before moving onto New Business items. Any member of the Commission may unilaterally request for an item to be removed from the Consent Agenda, which would then require an individual discussion and vote.

All documents, including Consent Agenda items, will be provided by the Chief Procurement Officer to Commission members and staff at least ten (10) calendar days in advance of a Commission meeting no later than 4:00 PM CST.

ARTICLE VI

MEMBERS OF THE PROCUREMENT COMMISSION

The members of the Procurement Commission shall consist of the commissioners of General Services, Finance and Administration, and the Comptroller of the Treasury. The Chief Procurement Officer shall serve as a non-voting member. [On an annual basis, each member of the Commission shall be provided with a copy of the Conflict of Interest Policy, attached to these Bylaws at Exhibit A, and shall be required to complete and sign.](#)

ARTICLE VII

OFFICERS

The officers of the Commission shall consist of a Chairperson, Vice-chairperson, and Secretary. The Governor shall appoint the Chairperson. The voting members of the Commission shall elect a Vice-chairperson. The Chief Procurement Officer, as a non-voting member, shall serve as Secretary to the Commission. The terms of office shall begin on April 1 of each year and end March 31 of the following year.

ARTICLE VIII

LEGAL COUNSEL

The Attorney General and Reporter shall serve as legal counsel to the Commission in accordance with the requirements of Tenn. Code Ann. § 8-6-301.

ARTICLE IX

MEETINGS, PUBLIC HEARINGS, QUORUMS, AND VOTING

A. The Commission shall meet as frequently as required for the purpose of electing officers and conducting other appropriate business.

B. Regular meetings of the Commission shall be held the third Thursday of each month at such time and place as designated by the Chairperson after consultation with the other members, except that the regular meeting in November shall be held on the second Thursday. Should the third Thursday fall on a federal or state holiday, the regular meeting of the

Commission will be held on the second Thursday of the month. One member may appear at meetings telephonically if notice is provided to the other two members at least three (3) business days prior to such meeting and provided the other two members are present for the meeting. A regular meeting may be cancelled or rescheduled by the Chairperson after consultation and written consent with all members. Special meetings of the Commission may be called by the Chairperson, provided the Chairperson gives the other members and the public at least three (3) business days notice.

C. At all meetings, a majority of members, being two (2), shall constitute a quorum for action only upon consent by all members after reviewing the agenda. A majority vote of the quorum shall constitute the action of the Commission.

D. All meetings of the Commission shall be recorded and minutes of the Commission shall be in writing and presented for approval or correction by the Commission at its next meeting subsequent to the meeting in which the action was taken. All meetings to the extent possible will be video taped and accessible for future reference. Agendas and minutes shall be posted on the Central Procurement Office website from a link on the home page of the Central Procurement Office internet site to promote transparency.

ARTICLE X

DUTIES OF CHAIRPERSON

The Chairperson shall be the principal officer of the Commission. The Chairperson shall:

- A. Preside at meetings of the Commission;
- B. Create standing and special committees as needed, upon majority approval of the other voting members, and appoint committee members;
- C. Be an ex-officio member of all committees;
- D. Send notices of meetings to the other members and to the members of the public;
- E. Establish agenda for meeting in consultation with the staff of Commission members;
- F. Ensure the objectives of the Commission are met;
- G. Perform such other duties as are appropriate to the office.

ARTICLE XI

DUTIES OF VICE-CHAIRPERSON

The Vice-chairperson shall:

- A. Perform the duties of the in the absence of the Chairperson;
- B. Serve in such capacities as may be assigned by the Chairperson;
- C. Perform such other duties as are appropriate to the office.

ARTICLE XII

DUTIES OF THE SECRETARY

The Chief Procurement Officer, a non-voting member of the Commission, shall serve as Secretary and shall:

- A. Certify and authenticate minutes and other documents relating to the business of the Commission;
- B. Provide minutes to the Commission members for approval or correction;
- C. Perform such other duties as are appropriate to the office;
- D. Establish the draft agenda for the Chair to consult with all members;
- E. Maintain all records and recordings of the meetings.

ARTICLE XIII

COMMITTEES

Committees, standing or special, shall be appointed by the Chairperson with majority consent of the other voting Commission members. The Chairperson shall be an ex-officio member of all committees.

ARTICLE XIV

COMMUNICATION, NOTICE, PUBLICATION,

AND CORRECTION OF ERRORS

Communication and notice may be accomplished through the Central Procurement Office website, e-mails, announcements, newsletters, or other methods. The Chief Procurement Officer, in consultation with the Chairperson, shall be responsible for collecting information and producing a “Final Copy” of the communication ready for posting on the Central Procurement Office website or for distribution via other methods. Final Copy is defined as the communication that has been edited for proper grammar, accuracy, and overall clarity and quality, including any final pictures or graphics to be attached. The Procurement Commission 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.

ARTICLE XV

COMMISSION STAFF

The Commission’s staff shall consist of the Chief Procurement Officer, staff of the Central Procurement Office as designated by the Chief Procurement Officer, and such other staff as designated by each Commission member.

ARTICLE XVI

SUSPENSION OF PROCEDURES

Any provision of these Procedures may be suspended upon a unanimous vote of the voting members of the Commission at a Regular or Special Meeting without the necessity of an amendment to these Procedures.

ARTICLE XVII

AMENDMENTS

These Procedures may be amended at any Regular or Special Meeting of the Commission by a unanimous vote of the voting members of the Commission.

Effective _____

Conflict of Interest Policy
Members of the Procurement Commission

Purpose. The Purpose of this Conflict of Interest Policy is to identify, evaluate and disclose any actual or potential conflicts of interest that a Commission member may have in serving on the Commission, and to ensure that the activities of Commission members do not have the appearance of conflicting with the provision of full and unbiased service to the public.

Definition. “Conflict of Interest” means a material interest that may affect or may appear likely to affect a Commission member’s judgment or conduct while serving on the Commission. A Conflict of Interest is material if an ordinary person would take it into account in making a decision.

Policy.

1. Each Commission member shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:
 - i. Using public office for private gain;
 - ii. Giving preferential treatment to any person;
 - iii. Impeding government efficiency or economy;
 - iv. Losing complete independence or impartiality;
 - v. Making a government decision outside of official channels; or
 - vi. Affecting adversely the confidence of the public in the integrity of the government.
2. Each Commission member shall not directly or indirectly use, disclose or allow the use of official information which was obtained through or in connection with his or her appointment to the Commission for the purpose of furthering the private, personal, professional, or financial interest of any person, including the Commission member.
3. Each Commission member shall not directly or indirectly engage in a financial transaction as a result of, or primarily relying upon information obtained through his or her Commission appointment.
4. Each Commission member shall not receive personal, professional or financial benefit as a result of or relying on information obtained through his or her Commission appointment.

5. On an annual basis, each Commission member shall be provided with a copy of this Policy and shall be required to complete and sign an acknowledgement of the Policy.
6. Along with the acknowledgement of the Policy, each Commission member shall also disclose all actual and potential conflicts of interest on an annual basis and promptly thereafter whenever an actual or potential Conflict of Interest has been identified in connection with any matter to be brought before the Commission.
7. Each Commission member shall not vote on a matter or participate in discussion on a matter should there be an identified actual or potential Conflict of Interest.
8. While serving on the Commission, the Commission member will not participate in considerations or actions involving individuals in his or her immediate family; individuals employed by him or her, or his or her organization; services provided by him or her, or his or her organization; or any other matter in which his or her participation may create an appearance of bias or impropriety.
9. When a Commission member is in doubt as to the proper interpretation of this Conflict of Interest Policy, he or she is expected to seek the advice of the Chief Procurement Officer or his or her designee.

Policy acknowledged by:

Procurement Commission Member Signature _____ **Date**

Title

Annual Disclosure: Attach documentation disclosing any Conflict of Interests.

**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

December 2019

1. Item No. 763.A164
Service: Janitorial Services
Agency/Location: Tennessee Emergency Management Agency, 1510 R.E. Bailey Bypass, Jackson, Tennessee
Annual Price: \$6,674.40, or \$556.20 per month or \$1.0303 per square foot for a total of 6,478 square feet.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 1/01/2020 – 12/31/2020

2. Item No. 763.A178
Service: Janitorial Services
Agency/Location: Tennessee Highway Patrol, Truck Inspection Site (I-65 North), 5753 Highway 31W, Portland, Tennessee
Annual Price: \$6,084.29, or \$507.02 per month or \$2.03 per square foot for a total of 3,000 feet.
No price increase requested.
Satisfaction: No complaints have been filed.
Re-Certification Requested for Period of 1/1/2020 – 12/31/2020

ADDENDUM

3. Item No. 763.A130
Service: SWC 920 Drug Testing Kits
Agency/Location: Tennessee Department of General Services, Central Procurement Office, 312 Rosa L. Parks Ave., Nashville, Tennessee
Annual Price: Current Spend \$1,447,465.36 (November 2018 through October 2019).
Drug testing kits will now be produced by GH Solutions instead of Abbott Laboratories. Laboratory confirmations will continue to be performed by Abbott Laboratory Services.
No price increase requested.
Satisfaction: No complaints have been filed.
Addendum will have effective date of 1/1/2020 and run until the end of the contract term on 9/30/2020.

STUART MCWHORTER
Commissioner of Finance & Administration

JUSTIN P. WILSON
Comptroller of the Treasury

CHRISTI BRANSCOM, Chairman
Commissioner of General Services

MICHAEL F. PERRY
Chief Procurement Officer

CERTIFICATION

4. Item No. 763.A193
Service: Janitorial Services
Agency/Location: Tennessee Department of Transportation, Gallatin Shop, 1215
Hartsville Pike, Gallatin, Tennessee
Annual Price: \$6,375.83, or \$531.32 per month or \$4.28 per square foot for a total of
1,490 square feet.
Certification Requested for Period of 1/1/2020 – 12/31/2020

DE-CERTIFICATION

5. Item No. 763.A148
Service: Janitorial Services
Agency/Location: Tennessee Department of Safety, Giles County Scale Complex, I-65
North Bound Side Between Mile Marker 5&6, Giles County, Tennessee
Annual Price: \$8,798.52, or \$733.21 per month or \$1.76 per square foot for a total of
5,000 square feet. Annual Price: \$3,970.92 or \$330.91 monthly or \$0.79 per square foot
for a total of 5,000 square feet for once a month deep clean service
No price increase requested.
Satisfaction: Decertifying due to subcontractor being unable to meet expectations
De-Certification Requested for 1/1/2020

STUART MCWHORTER
Commissioner of Finance & Administration

JUSTIN P. WILSON
Comptroller of the Treasury

CHRISTI BRANSCOM, Chairman
Commissioner of General Services

MICHAEL F. PERRY
Chief Procurement Officer

LIMITATION OF LIABILITY REPORT

MEMORANDUM OF UNDERSTANDING REPORT

Number	SWC# / Edison Contract #	Contract Name	Category Specialist / Sourcing Analyst	Vendor Name	Description	MOU Active Date	Items Added via MOU
274	57315	Paper, Print Shop	James Vallone	Dennis Paper Company	Additional paper product	11/1/2019	PAPER, SHEETFED, COVER, 65#, 23 X 35, BRIGHTS
275	64575	Vexcel Ortho Imagery Services	Sharon Pope	Vexcel Imaging Inc.	Addition of Service	12/2/2019	VDP Gov Public Facing Website Subscription
276	SWC 222 / 61893	Vehicle Leasing	Parker Birt	Acme Auto Leasing LLC	Additional Leased Vehicle Option	11/15/2019	2020 Ford Expedition XLT 4WD, leather seats, 2nd row Captains Chairs 36 - month lease and 12 - month lease
277	64432	Vehicles	Mike Neely	Worldwide Equipment	Add Mac trucks	11/15/2019	Mac Trucks class 6/7 added to contract
278	64345	Cellular Devices, services, and Business solutions	Richard Kotler	Verizon Wireless	Additional Plans for data	11/28/2019	1. Device Service Plan 1-" for devices such as but not limited to: tablets, Ipads, Laptiops, Modems and MiFi" 2. Device servilan 2 - "for devices such as but not limited to tablets, Ipads, Modems and Mifi"
279	64345	Cellular Devices, services, and Business solutions	Richard Kotler	Verizon Wireless	Additional Plan for Voice Only	12/3/2019	Legacy Wireless Voice Calling Plan
280	52905	Linen, Uniform, Dust Control	Parker Birt	Aramark Uniform Services	Location Specific Items	12/18/2019	Standard Pillow Case, Double Flat Sheet, Washcloths, Bath Towels, Tablecloths, Soda Towels, Hand Towels, Linen Bags

CORRECTION OF ERRORS

Request to correct the following errors:

- (1) Revise the website link provided in section 1.4.7. of the RFP Template from:
<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-/request-for-proposals--rfp--opportunities1.html> to the following:
<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information/request-for-proposals--rfp--opportunities1.html>.
- (2) Revise the “Prohibited Advertising or Marketing” optional term in the No Cost Contract Template as follows:
Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that the Contractor’s goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this section shall survive the termination of this Contract.
- (3) Delete and replace the reference to “Contractor” with “Grantee” in the Endowment Grant Contract model at the following places: p. 1 Preamble and p. 15 E.#. Intellectual Property.

Explanation of errors:

- (1) The current website link provided is no longer valid.
- (2) The “in advertising” is duplicative.
- (3) In accordance with CPO Policy 2013-007, the correct term used in the Endowment Grant Model should be “Grantee” instead of “Contractor.”

Procurement Staff signatures:

Bryan S. Chriske

Digitally signed by Bryan S. Chriske
DN: cn=Bryan S. Chriske, ou=Comptroller of the Treasury,
email=bryan.chriske@cot.tn.gov, c=US
Date: 2020.02.07 10:14:18 -06'00'

Bryan Chriske, Legislative Procurement Compliance Manager,
Comptroller of the Treasury

Date

Paul D. Krivacka

Digitally signed by Paul D. Krivacka
DN: cn=Paul D. Krivacka, o=Central Procurement Office, ou=Department of General
Services, email=paul.krivacka@tn.gov, c=US
Date: 2020.02.06 16:12:56 -06'00'

2/6/2020

Paul Krivacka, Director of Category Management and Legal Team,
Central Procurement Office

Date

Buddy Lea

Digitally signed by Buddy Lea
DN: cn=Buddy Lea, o=Finance and Administration, ou=Finance and
Administration, email=buddy.lea@tn.gov, c=US
Date: 2020.02.06 18:22:56 -06'00'

Buddy Lea, Assistant Commissioner,
Department of Finance & Administration

Date