

**AGENDA**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #050**  
**THURSDAY, AUGUST 18, 2022, 2:00 P.M.**  
**NASHVILLE ROOM**

<b>AGENDA ITEM</b>	<b>PAGE #</b>
I. Call to Order	--
II. Approve Minutes from April 26, 2022, Meeting .....	<b>3</b>
III. Advisory Council Agenda Items Overview..... (see attached documentation)	<b>12</b>
IV. New Business  Proposed revisions to the following Central Procurement Office documents (see attached documentation):  (1) Proof of Financial Responsibility – RFP Template..... (2) Proof of Financial Responsibility – RFQ Template..... (3) Emergency Purchases E-Form Update..... (4) Procurement Procedures Manual of the CPO, § 7. Managing The Relationship with the Contracting Party..... (5) Contractor Scorecard Template (NEW) ..... (6) Publication 1075 Attachment (Update)..... (7) Assistance Listing Number (Formerly Known as the CFDA Number) .....	     <b>15</b> <b>27</b> <b>42</b> <b>48</b>  <b>56</b> <b>59</b> <b>68</b>
V. Other Business	--
VI. Adjournment	--

**MINUTES OF APRIL 26, 2022  
MEETING**

**MINUTES**  
**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #049**  
**THURSDAY, APRIL 26, 2022, 2:00 P.M.**  
**NASHVILLE ROOM AND WEBEX**

**Members in Attendance:**

Mike Perry, Bryan Chriske, Hannah Salita, Buddy Lea, Chris Benson, Brian Wilcox, Jasmine Quattlebaum, Stu Shunk

**Others in Attendance:**

Paul Krivacka, Jenny Young, Debi Moss, Robin Upchurch, Davis Nwankwo, Randy Dean, DeRenne Raley, Karen Conway, Kay Morgan, Chadwick Nottingham, Jessica Starling, Toni Stuart, Anetra Smith, Shannon Mohundro, Lorraine Lassourreille, Sharon Pope

**I. Call to Order:** Mr. Mike Perry, Chief Procurement Officer, called the meeting to order and recognized that a quorum of voting members was present.

**II. Minutes from the December 15, 2021, Meeting:** Mr. Perry asked if there were any corrections or additions to the minutes from the December 15, 2021, meeting. Hearing none, a motion was made by Mr. Buddy Lea, Assistant Commissioner, Department of Finance and Administration, to accept the minutes as presented. Mr. Chris Benson, Business Operations Director, Finance and Administration, seconded the motion. All members voted in favor – none opposed.

**III. New Business:**

Mr. Perry asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the following New Business agenda items:

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

(1) ADA Language - NEW:

Mr. Krivacka summarized the following points about the ADA Language proposal:

- This proposal was requested by DMHSAS and will add optional language to the Grant and non-grant contracts as follows:

The [grantee or contractor] must comply with the Americans with Disabilities Act (ADA) of 1990, as amended, including implementing regulations codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and at 28 CFR Part 36 "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities," and any other laws or regulations governing the provision of services to persons with a disability. For more information, please visit the ADA website: <http://www.ada.gov>.

Hearing no discussion on agenda item (1), Mr. Chriske made a motion to recommend the ADA Language proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

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

(2) DCS Optional Clauses (NEW)

Mr. Krivacka presented the following points regarding the DCS Optional Clauses (NEW) proposal:

- This proposal will add new optional terms to the FA template that DCS commonly requests. Adoption of this proposal will reduce the number of RERs that are requested. The new terms are as follows: (1) Not a DCS Employee; (2) Employee Background Checks; and (3) Criminal Background Check.

Hearing no discussion on agenda item (2), Mr. Lea made a motion to recommend the DCS Optional Clauses (NEW) proposal as presented to the Procurement Commission for approval. Mr. Benson seconded the motion. All members voted in favor – none opposed.

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

(3) Advanced Payments Rule Exception Request (RER)

Mr. Krivacka presented the following points about Advanced Payments Rule Exception Request (RER) proposal:

- This proposal will add additional parameters for when procurement professionals are required to complete and submit the RER- Advance Payments.
- If using "Advance Payment" as the payment methodology, then procurement professionals are required to complete and submit an RER if extending the

term OR increasing the funding amounts (after the fact) in addition to those times when they are including an advance payment provision.

Mr. Lea questioned if extending or increasing funding after the fact and including the advanced payment is to reduce the number of RERs to complete all the items in one fall swoop instead of handling them individually. Mr. Krivacka responded that it formalizes the process because, at this time, the Advance Payment process does not have a lot of formalities around it. In addition, there is another issue of running out of funds, which will help facilitate a process for that as well.

Mr. Benson questioned the template language for the Advance Payment process and excluded software licensing, maintenance, and technical support items. He stated that F&A purchases blocks of time that require being paid for upfront, but allowing use over a period of time. Mr. Benson asked if this type of purchase was included in the Advance Payment process or if it was only used on new contracts. Mr. Krivacka replied that the Advance Payment process was more for new contracts. He explained that there is an Advance Payment template provision that is specifically designed in the context of maintenance and support.

Hearing no further discussion on agenda item (3), Mr. Benson made a motion to recommend Advanced Payments Rule Exception Request (RER) proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

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

(4) Endowment Grant

Mr. Krivacka presented the following points regarding the Endowment Grant proposal:

- This proposal will clarify and make a distinction between a direct appropriation grant vs. an endowment grant.
- The language in the red font was recommended by F&A representatives to clarify misconceptions or ambiguity surrounding use of the endowment grant template.
- If the appropriation is not awarded in the appropriations bill and does not appear in F&A's Division of Budget's annual direct appropriation list, then agencies should be using either an Endowment Grant ("GE"), Governmental Grant ("GG") or Grant Contract ("GR") template if the public is the beneficiary.

Hearing no discussion on agenda item (4), Mr. Chriske made a motion to recommend Endowment Grant proposal as presented to the Procurement Commission for approval. Hanna Salita, Program Director, Office of Administrative Services seconded the motion. All members voted in favor – none opposed

Mr. Krivacka then proceeded to present agenda item (5):

(5) Grant Cover Sheets

Mr. Krivacka presented the Grant Cover Sheets proposal:

- This proposal will replace the CFDA # with the Assistance Listing Number on the cover sheet for the GG, GR, and IG templates and model.
- This proposal will also, for the IG cover sheet, replace "Contractor" as an option and replace it with "Recipient" for the grantee designation on the cover sheet and corresponding instructions.
  - This proposal was requested by state agencies to clear up any confusion as to when the grantee should be designated as a contractor when using an Interagency agreement.
  - Under the grant management policy, if the grantee is designated as a contractor, then the IA template should be used.

Hearing no discussion on agenda item (5), Mr. Lea made a motion to recommend the Grant Cover Sheets proposal as presented to the Procurement Commission for approval. Mr. Chriske seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (6):

(6) IG - FAIW

Mr. Krivacka presented the IG - FAIW proposal:

- This proposal will update the current IG template by adding the newly revised FAIW (Federal Award Identification Worksheet) as an attachment. This proposal also includes the most recent version of the FAIW that must be included in the IG contract.

Hearing no discussion on agenda item (6), Mr. Benson made a motion to recommend the IG - FAIW proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (7):

(7) Contract Amendment Template

Mr. Krivacka presented the Contract Amendment Template proposal:

- This proposal switches the template default Amendment Effective Date language and replaces it with the optional Amendment Effective Date

language.

- Under CPO rules, policies, and procedures, no contract or amendment is effective until it has been duly authorized by all required approvers. This means that the earliest a contract or an amendment can be effective is the day on which the last approval has been obtained.
- In instances where the State Agency would prefer to have a specific amendment Effective Date, they will still be able to utilize the (now) optional text.

Mr. Benson asked if this included EDISON approvals or just the signatures. Mr. Krivacka replied that most contract documents would have two signatures, the department head, and the Chief Procurement Officer, and then there will be numerous electronic approvals. It is the last approval necessary to have a binding and effective contract. The date in Edison is the effective date, not the date on the amendment.

Hearing no further discussion on agenda item (7), Mr. Chriske made a motion to recommend the Contract Amendment Template proposal as presented to the Procurement Commission for approval. Mr. Benson seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (8):

(8) Emergency Purchase Request Report (NEW)

Mr. Krivacka presented the Emergency Purchase Request Report (NEW) proposal:

- This proposal will add a new Edison E-form to document emergency requests and the CPO's approval of the same.
- The use of the Edison E-Form tool will also assist the CPO with meeting any statutory or FRC reporting requirements.

Mr. Benson asked if there was an emergency purchase if they still needed to email Chief Procurement Officer Mike Perry. Mr. Perry stated that the process uses the E-Form in Edison and no longer uses the email process.

Hearing no further discussion on agenda item (8), Mr. Chriske made a motion to recommend the Emergency Purchase Request Report (NEW) proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (9):

(9) Request for Qualifications

Mr. Krivacka presented the Request for Qualifications proposal:

- This proposal will make several changes to the RFQ Template, including the following highlights:
  - Removal of references to Cost being evaluated (generally, if Cost is going to be evaluated, then a procurement professional should use an RFP or other procurement method);
  - Removal of references to receiving Cost Proposals from only Qualified Respondents – The State will receive Technical and any requested cost information at one Response deadline; and,
  - Removal of B.17. References to match recent changes to the RFP Template.

Hearing no discussion on agenda item (9), Mr. Lea made a motion to recommend the Request for Qualifications proposal as presented to the Procurement Commission for approval. Mr. Benson seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (10):

(10) State of TN Administrative Fee

Mr. Krivacka presented the State of TN Administrative Fee proposal:

- This proposal removes the reference to an individual person and will instead refer generally to the position title.
- This change will offer more flexibility and less need to update as personnel changes are made.

Hearing no discussion on agenda item (10), Mr. Benson made a motion to recommend the State of TN Administrative Fee proposal as presented to the Procurement Commission for approval. Ms. Salita and Mr. Chriske seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (11):

(11) Grant Budget Attachment Option (NEW)

Mr. Krivacka presented the Grant Budget Attachment Option (NEW) proposal:

- This proposal adds a new option to the GR, GG, and IG for instances when it is beneficial to have line-item details broken out into more specific categories instead of grouped together.
- This change has been requested by the Department of Health to assist with reporting requirements.

Hearing no discussion on agenda item (11), Mr. Lea made a motion to recommend the Grant Budget Attachment Option (NEW) proposal as presented to the Procurement Commission for approval. Mr. Chriske seconded the motion. All members voted in favor –



none opposed.

Mr. Krivacka then proceeded to present agenda item (12):

(12) GU (Tennessee or Local Federal Government) Model – FFATA

Mr. Krivacka presented the GU (Tennessee or Local Federal Government) Model - FFATA proposal:

- This change will mirror changes made to other contract templates regarding the FFATA contract term.
- In particular, the applicability threshold has been raised to \$30,000, and the numbering system utilized by the federal government has been updated from DUNS to the Unique Entity Identifier.

Hearing no discussion on agenda item (12), Mr. Benson made a motion to recommend the GU (Tennessee or Local Federal Government) Model – FFATA proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (13):

(13) Policy No 2015-010 State Payment Card Policy and Procedures (NEW)

Mr. Krivacka presented the Policy No 2015-010 State Payment Card Policy and Procedures (NEW) proposal:

- This proposal is recommended by the P-Card Team to address several questions they received regarding delivery of P-Cards.
- This request will add a new subsection 6.2. "P-Card Delivery and Distribution" and explain that the RER process should be followed in the event direct delivery to Cardholders is requested.

Hearing no discussion on agenda item (13), Mr. Lea made a motion to recommend the Policy No 2015-010 State Payment Card Policy and Procedures (NEW) proposal as presented to the Procurement Commission for approval. Mr. Benson seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (14):

(14) Boycott of Israel (NEW)

Mr. Krivacka presented the Boycott of Israel (NEW) proposal:

- This proposal adds a new mandatory term and condition to the configurator

and the FA Template pursuant to [Public Chapter Number 775](#).

- The new term includes a certification that the company is not currently engaged in and will not for the duration of the contract engage in, a boycott of Israel.
- The new law does not apply to a contract with a total potential value of less than two hundred fifty thousand dollars or to contractors with less than ten employees.

Hearing no discussion on agenda item (14), Mr. Lea made a motion to recommend the Boycott of Israel (NEW) proposal as presented to the Procurement Commission for approval. Mr. Chriske seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka then proceeded to present agenda item (15):

(15) Diversity Utilization Plan

Mr. Krivacka presented the Diversity Utilization Plan proposal:

- This change updates the website address and the phone number for the Governor's Office of Diversity Business Enterprise.

Hearing no discussion on agenda item (15), Mr. Benson made a motion to recommend the Diversity Utilization Plan proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

**Adjournment:** Hearing no other business, a motion for adjournment was made by Mr. Chriske. Mr. Lea seconded the motion. All members voted in favor – none opposed, whereupon the April 26, 2022, the Advisory Council meeting was adjourned.

**ADVISORY COUNCIL  
AGENDA ITEMS OVERVIEW**

## Overview of Agenda Items:

### 1. Proof of Financial Responsibility – RFP Template

- Agenda Items #1 and #2 are both regarding the financial responsibility related question options asked during the solicitation process. This change will synchronize both templates so the same options are available for use in both the RFP and RFQ Templates.
- Changes include changing the bank reference question indicating that the relationship with the respondent is in a positive standing, to maintaining a “satisfactory” business relationship. This request has been requested recently by banks.
- Also, this request updates the Credit Bureau Report option to a more broad “Financial Documentation” to permit private companies to supply documentation that may not be readily available through a credit bureau due to their status, but shows their financial stability.

### 2. Proof of Financial Responsibility –RFQ Template

- Updating the RFQ Attachment A options to be consistent with the changes to the RFP Template questions regarding Financial Responsibility, as detailed in Agenda Item #1.

### 3. Emergency Purchases E-Form Update

- This request adds a few additional fields to the Emergency Purchases E-Form.
- These changes will assist the Central Procurement Office with reporting requirements and will address the scenario if amending or supplementing an already approved Emergency Purchase Request Authorization EFORM.

### 4. Procurement Procedures Manual of the CPO, § 7. Managing the Relationship with the Contracting Party.

- This request adds guidance for circumstances where a procurement professional includes a scorecard to evaluate the Contracting Party’s performance as an optional contract management tool.

### 5. Contractor Scorecard Template – NEW

- This request adds new template language for circumstances where Procurement Professionals will utilize a Contractor Scorecard. The intent is that the contract term, to be included at Contract Section A.#. Scope, will be standardized.
- Also included as part of the new Contract Scorecard Template is a new Contractor Scorecard Template Metrics, Attachment. The intent is that the metrics attachment will be able to be modified as needed to meet the specific requirements and performance metrics particular to the Contract.

### 6. Publication 1075 Attachment (update)

- The Agenda Packet removes a duplicative copy and includes the following correction to Agenda Item # 6.

- The previous version of IRS Publication 1075, included two different attachment options: (Option a: Safeguarding Contract Language for General Services; and Option b, Safeguarding Contract Language for Technology Services.)
  - The current publication 1075 only has one model option as Exhibit 7 for the Safeguarding Contract Language.
  - Therefore, the State’s instructional text no longer needs to reference two options; and the instructions have been modified accordingly.
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- This request is to assist State Agencies with compliance with the updated IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies: (<https://www.irs.gov/pub/irs-pdf/p1075.pdf>).
  - In particular, this request is to update the specific contract language included as an Attachment in the FA Template to comply with the model language of Exhibit 7 of IRS Publication 1075 (Rev. 11-2021).

**7. Assistance Listing Number (formerly known as the CFDA number)**

- This request is a clean-up to update a few references from “CFDA Number” to “Assistance Listing Number” in both an optional term utilized by Department of Health and the FA and GU coversheets.

**PROOF OF FINANCIAL  
RESPONSIBILITY – RFP TEMPLATE**

**REDLINE**

**REQUEST: Revise the RFP Instructions, Considerations, and Options as follows:**

**6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION A**

**Proof of Financial Ability to Perform**

One or more of the following optional provisions for a respondent to show its financial ability to perform must be added to RFP Attachment 6.2., Section A table if appropriate. Solicitation coordinators should consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or services being procured. In the interests of flexibility, one or more of the following optional provisions must be utilized.

**Option: Bank Reference**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a bank reference as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide a current bank reference indicating that the Respondent <del>maintains a satisfactory's</del> business relationship with the financial institution <del>is in positive standing</del> . Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
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**Option: Credit References**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of vendor credit references as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
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**Option: ~~Credit Bureau Report~~Financial Documentation**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit bureau report as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide <u>at least one of the following financial documents dated within the last three (3) months: (1) an official document or letter from an accredited credit bureau, <del>verified and dated within the last three (3) months and</del> indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.); (2) income statement, indicating the Respondent's financial operations; or (3) balance sheet, showing the Respondent's flow of funds.</u>  <u>Any documentation disclosing the amount of cash flows from operating activities should be for the Respondent's most current operating period and must indicate whether the cash flows are positive or negative. If the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</u>	
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		<u>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.</u>
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**Option: Credit Rating**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit rating as evidence of Respondent's financial responsibility.

	<b>A.#.</b>	Provide a current credit rating from Moody's, Standard & Poor's, A.M. Best or Fitch Ratings, verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent.
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**Option: Credit Rating – Credit Bureau Report Option.**

**Some companies may not have an official credit rating from one of the four major credit rating services. Therefore, requiring credit ratings (as detailed above) without an alternative to the requirement could conceptually prevent certain companies from responding to the RFP.**

**The procuring agency should consider the possible impact of the requirement on competition versus the State's need to reasonably determine the financial responsibility of respondents and decide whether it is appropriate to include an alternative to the requirement.**

Insert the following paragraph in the optional credit rating requirement text (above) if appropriate.

<p><b>OR</b>, in lieu of the aforementioned credit rating, provide an official document or letter from an accredited credit bureau, <del>verified and</del> dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)</p>		
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**Option: Certificate of Insurance.**

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) ONLY IF a Certificate of Insurance is considered necessary evidence of contractor financial responsibility. (Specifying insurance requirements in the *pro forma* contract does not necessitate adding this optional response requirement.)

Add, delete, or revise subsections detailing insurance coverage requirements as appropriate. (If this response requirement item is added to the RFP, the appropriate Insurance provision must be detailed in the *pro forma* contract. The insurance coverage requirements specified in both the RFP and the *pro forma* contract must be the same.)

	<b>A.#.</b>	Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following: (a) Name of the Insurance Company (b) Respondent's Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverages:	
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		<ul style="list-style-type: none"> <li>(i) Workers' Compensation/ Employers' Liability with a limit not less than the relevant statutory amount or <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence for employers' liability;</li> <li>(ii) Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence and <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) aggregate;</li> <li>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence; and</li> <li>(iv) Professional Malpractice Liability with a limit of not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per claim.</li> </ul> <p>(e) The following information applicable to each type of insurance coverage:</p> <ul style="list-style-type: none"> <li>(i) Coverage Description,</li> <li>(ii) Exceptions and Exclusions,</li> <li>(iii) Policy Effective Date,</li> <li>(iv) Policy Expiration Date, and</li> <li>(v) Limit(s) of Liability.</li> </ul>	
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**Option: Audited Financial Statements.**

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) ONLY IF the anticipated contract amount is  $\geq$  \$1,000,000.00 AND extraordinary effort to assure contractor financial responsibility is appropriate.

	<b>A.#.</b>	<p>Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements <u>must</u>:</p> <ul style="list-style-type: none"> <li>(1) reflect an audit period for a fiscal year ended within the last 36 months;</li> <li>(2) be prepared with all monetary amounts detailed in United States currency;</li> <li>(3) be prepared under United States Generally Accepted Accounting Principles (US GAAP);</li> <li>(4) include the auditor's opinion letter; financial statements; and the notes to the financial statements; and</li> <li>(5) be deemed, in the sole discretion of the State to reflect sufficient financial stability to undertake the subject contract with the State if awarded pursuant to this RFP.</li> </ul> <p>NOTES:</p>	
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	<ul style="list-style-type: none"> <li>▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will <u>not</u> be accepted.</li> <li>▪ All persons, agencies, firms, or other entities that provide opinions regarding the Respondent’s financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof that the person or entity who renders an opinion regarding the Respondent’s financial status is licensed, including the license number and state in which the person or entity is licensed.</li> </ul>	
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**Option: Audited Financial Statements – Line of Credit Option.**

Privately held entities may not respond to a RFP if there is a risk that their audited financial statements will be available for public review. Therefore, requiring audited financial statements (as detailed above) without an alternative to this requirement could limit competition or involvement by privately held entities.

The procuring agency should weigh the impact of the financial statement requirement on competition versus the state’s need to reasonably determine the financial stability/responsibility of Respondents and whether a suitable alternative to a financial statement is available.

Insert the following paragraph before the “NOTES” in the optional audited financial statements requirement text (above) if appropriate.

**OR**, in lieu of the aforementioned independent audited financial statements, provide a financial institution’s letter of commitment for a general Line of Credit in the amount of **WRITTEN AMOUNT ≥ ONE MILLION DOLLARS (\$NUMBER AMOUNT)**, U.S. currency, available to the Respondent. Said letter must specify the Respondent’s name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least **PERIOD ≥ 6 MONTHS**.

**Option: Audited Financial Statements – Additional Requirement.**

Add the following sentence at the end of the second bulleted note in the optional audited financial statements requirement text ONLY IF the contracting agency legal counsel recommends it in writing.

Any attest or review of the financial status of a Tennessee corporation must be rendered by an accountant or accounting firm licensed or otherwise specifically permitted to provide an attest or review by the Tennessee Board of Accountancy.

**Contingent Requirement: Performance Bond Confirmation.**

Add the following row to the RFP Attachment 6.2., Section A table ONLY IF a Performance Bond is proposed.

	<b>A.#.</b>	Provide a statement confirming that, if awarded a contract pursuant to this RFP, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFP. The statement must be signed by an individual with legal authority to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it.	
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**Option: Proposal Bond Confirmation.**

Add the following row to the RFP Attachment 6.2, Section A table ONLY IF a Proposal Bond is required by the Chief Procurement Officer. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract.

	<b><u>A.#.</u></b>	<u>Provide a proposal bond issued by a surety company licensed to do business in the State of Tennessee in the amount of \$_____.</u>	
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**Option: Additional Mandatory Requirements.**

~~Typically, each mandatory requirement item must be drafted such that it is capable of being objectively determined on a “yes/no” basis. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Qualitative evaluation should not be required to determine whether the response was reasonable and adequate to satisfy each mandatory requirement.~~

~~Procuring agency staff may be asked to provide evidence that a proposed mandatory requirement is rationally related to the procurement goals.~~

Typically, each mandatory requirement item must be drafted such that an objective “yes/no” determination of whether the requirement was met is reasonable and adequate (clearly not necessitating a qualitative evaluation of the response).

Contracting agency staff may be asked to provide evidence that a proposed mandatory requirement is not inappropriately arbitrary or capricious (e.g., (1) information from an independent, authoritative source indicating that the proposed criteria is a reasonable standard; (2) a recommendation signed by the contracting agency legal counsel explaining why the proposed requirement is not arbitrary or capricious); or other evidence that a proposed mandatory requirement is rationally related to the procurement goals).

Add mandatory requirement items to the RFP Attachment A table (after the template items) as appropriate. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Do not include an arbitrary mandatory requirement. To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.

**PROOF OF FINANCIAL  
RESPONSIBILITY – RFP TEMPLATE**

**CLEAN**

**REQUEST: Revise the RFP Instructions, Considerations, and Options as follows:**

**6.2. TECHNICAL RESPONSE & EVALUATION GUIDE ATTACHMENT – SECTION A**

**Proof of Financial Ability to Perform**

One or more of the following optional provisions for a respondent to show its financial ability to perform must be added to RFP Attachment 6.2., Section A table if appropriate. Solicitation coordinators should consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or services being procured. In the interests of flexibility, one or more of the following optional provisions must be utilized.

**Option: Bank Reference**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a bank reference as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide a current bank reference indicating that the Respondent maintains a satisfactory business relationship with the financial institution. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
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**Option: Credit References**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of vendor credit references as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
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**Option: Financial Documentation**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit bureau report as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	<p>Provide at least one of the following financial documents dated within the last three (3) months: (1) an official document or letter from an accredited credit bureau, indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.); (2) income statement, indicating the Respondent’s financial operations; or (3) balance sheet, showing the Respondent’s flow of funds.</p> <p>Any documentation disclosing the amount of cash flows from operating activities should be for the Respondent’s most current operating period and must indicate whether the cash flows are positive or negative. If the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</p> <p>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent’s financial status <u>must</u> be properly licensed to render</p>	
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		such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.
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**Option: Credit Rating**

Add the following row to the RFP Attachment 6.2, Section A table (after the template items) if appropriate to require the submission of a credit rating as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide a current credit rating from Moody’s, Standard & Poor’s, A.M. Best or Fitch Ratings, verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent.
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**Option: Credit Rating – Credit Bureau Report Option.**

**Some companies may not have an official credit rating from one of the four major credit rating services. Therefore, requiring credit ratings (as detailed above) without an alternative to the requirement could conceptually prevent certain companies from responding to the RFP.**

**The procuring agency should consider the possible impact of the requirement on competition versus the State’s need to reasonably determine the financial responsibility of respondents and decide whether it is appropriate to include an alternative to the requirement.**

Insert the following paragraph in the optional credit rating requirement text (above) if appropriate.

**OR**, in lieu of the aforementioned credit rating, provide an official document or letter from an accredited credit bureau, dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.)

**Option: Certificate of Insurance.**

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) ONLY IF a Certificate of Insurance is considered necessary evidence of contractor financial responsibility. (Specifying insurance requirements in the *pro forma* contract does not necessitate adding this optional response requirement.)

Add, delete, or revise subsections detailing insurance coverage requirements as appropriate. (If this response requirement item is added to the RFP, the appropriate Insurance provision must be detailed in the *pro forma* contract. The insurance coverage requirements specified in both the RFP and the *pro forma* contract must be the same.)

	<b>A.#.</b>	Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following: (a) Name of the Insurance Company (b) Respondent’s Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverages: (i) Workers’ Compensation/ Employers’ Liability with a limit not less than the relevant statutory amount or	
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		<p><b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence for employers' liability;</p> <p>(ii) Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence and <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) aggregate;</p> <p>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence; and</p> <p>(iv) Professional Malpractice Liability with a limit of not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per claim.</p> <p>(e) The following information applicable to each type of insurance coverage:</p> <p>(i) Coverage Description,</p> <p>(ii) Exceptions and Exclusions,</p> <p>(iii) Policy Effective Date,</p> <p>(iv) Policy Expiration Date, and</p> <p>(v) Limit(s) of Liability.</p>	
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**Option: Audited Financial Statements.**

Add the following row to the RFP Attachment 6.2., Section A table (after the template items) ONLY IF the anticipated contract amount is  $\geq$  \$1,000,000.00 AND extraordinary effort to assure contractor financial responsibility is appropriate.

	<b>A.#.</b>	<p>Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements <u>must</u>:</p> <p>(1) reflect an audit period for a fiscal year ended within the last 36 months;</p> <p>(2) be prepared with all monetary amounts detailed in United States currency;</p> <p>(3) be prepared under United States Generally Accepted Accounting Principles (US GAAP);</p> <p>(4) include the auditor's opinion letter; financial statements; and the notes to the financial statements; and</p> <p>(5) be deemed, in the sole discretion of the State to reflect sufficient financial stability to undertake the subject contract with the State if awarded pursuant to this RFP.</p> <p>NOTES:</p>	
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	<ul style="list-style-type: none"> <li>▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will <u>not</u> be accepted.</li> <li>▪ All persons, agencies, firms, or other entities that provide opinions regarding the Respondent’s financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof that the person or entity who renders an opinion regarding the Respondent’s financial status is licensed, including the license number and state in which the person or entity is licensed.</li> </ul>	
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**Option: Audited Financial Statements – Line of Credit Option.**

Privately held entities may not respond to a RFP if there is a risk that their audited financial statements will be available for public review. Therefore, requiring audited financial statements (as detailed above) without an alternative to this requirement could limit competition or involvement by privately held entities.

The procuring agency should weigh the impact of the financial statement requirement on competition versus the state’s need to reasonably determine the financial stability/responsibility of Respondents and whether a suitable alternative to a financial statement is available.

Insert the following paragraph before the “NOTES” in the optional audited financial statements requirement text (above) if appropriate.

**OR**, in lieu of the aforementioned independent audited financial statements, provide a financial institution’s letter of commitment for a general Line of Credit in the amount of **WRITTEN AMOUNT ≥ ONE MILLION DOLLARS (\$NUMBER AMOUNT)**, U.S. currency, available to the Respondent. Said letter must specify the Respondent’s name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least **PERIOD ≥ 6 MONTHS**.

**Option: Audited Financial Statements – Additional Requirement.**

Add the following sentence at the end of the second bulleted note in the optional audited financial statements requirement text **ONLY IF** the contracting agency legal counsel recommends it in writing.

Any attest or review of the financial status of a Tennessee corporation must be rendered by an accountant or accounting firm licensed or otherwise specifically permitted to provide an attest or review by the Tennessee Board of Accountancy.

**Contingent Requirement: Performance Bond Confirmation.**

Add the following row to the RFP Attachment 6.2., Section A table **ONLY IF** a Performance Bond is proposed.

	<b>A.#.</b>	Provide a statement confirming that, if awarded a contract pursuant to this RFP, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFP. The statement must be signed by an individual with legal authority to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it.	
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**Option: Proposal Bond Confirmation.**

Add the following row to the RFP Attachment 6.2, Section A ONLY IF a Proposal Bond is required by the Chief Procurement Officer. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract.

	<b>A.#.</b>	Provide a proposal bond issued by a surety company licensed to do business in the State of Tennessee in the amount of \$____.	
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**Option: Additional Mandatory Requirements.**

Typically, each mandatory requirement item must be drafted such that an objective “yes/no” determination of whether the requirement was met is reasonable and adequate (clearly not necessitating a qualitative evaluation of the response).

Contracting agency staff may be asked to provide evidence that a proposed mandatory requirement is not inappropriately arbitrary or capricious (e.g., (1) information from an independent, authoritative source indicating that the proposed criteria is a reasonable standard; (2) a recommendation signed by the contracting agency legal counsel explaining why the proposed requirement is not arbitrary or capricious); or other evidence that a proposed mandatory requirement is rationally related to the procurement goals).

Add mandatory requirement items to the RFP Attachment A table (after the template items) as appropriate. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Do not include an arbitrary mandatory requirement. To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.

**PROOF OF FINANCIAL  
RESPONSIBILITY –RFQ TEMPLATE**

**REDLINE**

**REQUEST: Revise the RFQ Instructions, Considerations, and Options as follows:**

**ATTACHMENT A: TECHNICAL RESPONSE & EVALUATION GUIDE**

**Proof of Financial Ability to Perform**

**One or more of the following optional provisions for a respondent to show its financial ability to perform must be added to RFQ Attachment A table if appropriate. Solicitation coordinators should consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or services being procured. In the interests of flexibility, one or more of the following optional provisions must be utilized.**

**Option: Bank Reference**

**Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of a bank reference as evidence of Respondent’s financial responsibility.**

	<b><u>A.#.</u></b>	<b><u>Provide a current bank reference indicating that the Respondent maintains a satisfactory business relationship with the financial institution. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.</u></b>	
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**Option: Credit References**

**Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of vendor credit references as evidence of Respondent’s financial responsibility.**

	<b><u>A.#.</u></b>	<b><u>Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.</u></b>	
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**Option: Financial Documentation**

**Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of a credit bureau report as evidence of Respondent’s financial responsibility.**

	<b><u>A.#.</u></b>	<p><b><u>Provide at least one of the following financial documents dated within the last three (3) months: (1) an official document or letter from an accredited credit bureau, indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.); (2) income statement, indicating the Respondent’s financial operations; or (3) balance sheet, showing the Respondent’s flow of funds.</u></b></p> <p><b><u>Any documentation disclosing the amount of cash flows from operating activities should be for the Respondent’s most current operating period and must indicate whether the cash flows are positive or negative. If the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</u></b></p> <p><b><u>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent’s financial status must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such</u></b></p>	
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		<u>licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.</u>
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**Option: Credit Rating**

Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of a credit rating as evidence of Respondent’s financial responsibility.

	<b><u>A.#.</u></b>	<u>Provide a current credit rating from Moody’s, Standard &amp; Poor’s, A.M. Best or Fitch Ratings, verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent.</u>
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**Option: Credit Rating – Credit Bureau Report Option.**

Some companies may not have an official credit rating from one of the four major credit rating services. Therefore, requiring credit ratings (as detailed above) without an alternative to the requirement could conceptually prevent certain companies from responding to the RFQ.

The procuring agency should consider the possible impact of the requirement on competition versus the State’s need to reasonably determine the financial responsibility of respondents and decide whether it is appropriate to include an alternative to the requirement.

Insert the following paragraph in the optional credit rating requirement text (above) if appropriate.

OR, in lieu of the aforementioned credit rating, provide an official document or letter from an accredited credit bureau, dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.)

**Option: Certificate of Insurance.**

Add the following row to the RFQ Attachment A table (after the template items) ONLY IF a Certificate of Insurance is considered necessary evidence of contractor financial responsibility. (Specifying insurance requirements in the *pro forma* contract does not necessitate adding this optional response requirement.)

Add, delete, or revise subsections detailing insurance coverage requirements as appropriate. (If this response requirement item is added to the RFQ, the appropriate Insurance provision must be detailed in the *pro forma* contract. The insurance coverage requirements specified in both the RFQ and the *pro forma* contract must be the same.)

	<b><u>A.#.</u></b>	<u>Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details all of the following:</u> <u>(a) Name of the Insurance Company</u> <u>(b) Respondent’s Name and Address as the Insured</u> <u>(c) Policy Number</u> <u>(d) The following minimum insurance coverages:</u> <u>(i) Workers’ Compensation/ Employers’ Liability with a limit not less than the relevant statutory amount or WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence for employers’ liability;</u>	
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		<p><u>(ii) Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence and WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) aggregate;</u></p> <p><u>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence; and</u></p> <p><u>(iv) Professional Malpractice Liability with a limit of not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per claim.</u></p> <p><u>(e) The following information applicable to each type of insurance coverage:</u></p> <p><u>(i) Coverage Description,</u></p> <p><u>(ii) Exceptions and Exclusions,</u></p> <p><u>(iii) Policy Effective Date,</u></p> <p><u>(iv) Policy Expiration Date, and</u></p> <p><u>(v) Limit(s) of Liability.</u></p>	
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**Option: Audited Financial Statements.**

Add the following row to the RFQ Attachment A table (after the template items) ONLY IF the anticipated contract amount is  $\geq$  \$1,000,000.00 AND extraordinary effort to assure contractor financial responsibility is appropriate.

	<b><u>A.#.</u></b>	<p><u>Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements must:</u></p> <p><u>(1) reflect an audit period for a fiscal year ended within the last 36 months;</u></p> <p><u>(2) be prepared with all monetary amounts detailed in United States currency;</u></p> <p><u>(3) be prepared under United States Generally Accepted Accounting Principles (US GAAP);</u></p> <p><u>(4) include the auditor's opinion letter; financial statements; and the notes to the financial statements; and</u></p> <p><u>(5) be deemed, in the sole discretion of the State to reflect sufficient financial stability to undertake the subject contract with the State if awarded pursuant to this RFQ.</u></p> <p><u>NOTES:</u></p> <ul style="list-style-type: none"> <li><u>▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will not be accepted.</u></li> </ul>	
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	<ul style="list-style-type: none"> <li>All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status must be properly licensed to render such opinions. The State may require the Respondent to submit proof that the person or entity who renders an opinion regarding the Respondent's financial status is licensed, including the license number and state in which the person or entity is licensed.</li> </ul>	
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**Option: Audited Financial Statements – Line of Credit Option.**

Privately held entities may not respond to a RFQ if there is a risk that their audited financial statements will be available for public review. Therefore, requiring audited financial statements (as detailed above) without an alternative to this requirement could limit competition or involvement by privately held entities.

The procuring agency should weigh the impact of the financial statement requirement on competition versus the state's need to reasonably determine the financial stability/responsibility of Respondents and whether a suitable alternative to a financial statement is available.

Insert the following paragraph before the "NOTES" in the optional audited financial statements requirement text (above) if appropriate.

**OR**, in lieu of the aforementioned independent audited financial statements, provide a financial institution's letter of commitment for a general Line of Credit in the amount of **WRITTEN AMOUNT ≥ ONE MILLION DOLLARS (\$NUMBER AMOUNT)**, U.S. currency, available to the Respondent. Said letter must specify the Respondent's name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least **PERIOD ≥ 6 MONTHS**.

**Option: Audited Financial Statements – Additional Requirement.**

Add the following sentence at the end of the second bulleted note in the optional audited financial statements requirement text ONLY IF the contracting agency legal counsel recommends it in writing.

Any attest or review of the financial status of a Tennessee corporation must be rendered by an accountant or accounting firm licensed or otherwise specifically permitted to provide an attest or review by the Tennessee Board of Accountancy.

**Contingent Requirement: Performance Bond Confirmation.**

Add the following row to the RFQ Attachment A table ONLY IF a Performance Bond is proposed.

	<b><u>A.#.</u></b>	<p>Provide a statement confirming that, if awarded a contract pursuant to this RFQ, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFQ. The statement must be signed by an individual with legal authority to bind the Respondent to the provisions of this RFQ and any contract awarded pursuant to it.</p>	
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**Option: Proposal Bond Confirmation.**

Add the following row to the RFQ Attachment A table ONLY IF a Proposal Bond is required by the Chief Procurement Officer. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract.

	<u>A.#.</u>	<u>Provide a proposal bond issued by a surety company licensed to do business in the State of Tennessee in the amount of \$_____.</u>	
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**Option: Additional Mandatory Requirements.**

Typically, each mandatory requirement item must be drafted such that an objective “yes/no” determination of whether the requirement was met is reasonable and adequate (clearly not necessitating a qualitative evaluation of the response).

Contracting agency staff may be asked to provide evidence that a proposed mandatory requirement is not inappropriately arbitrary or capricious (e.g., (1) information from an independent, authoritative source indicating that the proposed criteria is a reasonable standard; (2) a recommendation signed by the contracting agency legal counsel explaining why the proposed requirement is not arbitrary or capricious); or other evidence that a proposed mandatory requirement is rationally related to the procurement goals).

Add mandatory requirement items to the RFQ Attachment A table (after the template items) as appropriate. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Do not include an arbitrary mandatory requirement. To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.

**Option: Cash Flow Information.**

Add the following row to the RFQ Attachment A table (after the model items) if the contracting agency chooses to review the evidence of Respondent’s financial stability/responsibility.

	<u>A.#</u>	<p><u>Provide documentation disclosing the amount of cash flows from operating activities for the Respondent’s most current operating period. Said documentation must indicate whether the cash flows are positive or negative, and, if the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</u></p> <p><u>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent’s financial status must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.</u></p>	
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**Option: Certificate of Insurance.**

Add the following row to the RFQ Attachment A table (after the model items) ONLY IF a Certificate of Insurance is considered necessary evidence of Respondent's financial stability/responsibility. (Specifying insurance requirements in the *pro forma* contract does not necessitate adding this optional response requirement.)

Add, delete, or revise subsections detailing insurance coverage requirements as appropriate. (If this response requirement item is added to the RFQ, the appropriate Insurance provision must be detailed in the *pro forma* contract, and the insurance coverage requirements specified in both the RFQ and the *pro forma* contract must agree.)

	<p><del>A.# Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following:</del></p> <p><del>(a) Insurance Company</del></p> <p><del>(b) Respondent's Name and Address as the Insured</del></p> <p><del>(c) Policy Number</del></p> <p><del>(d) The following minimum insurance coverage:</del></p> <p><del>(i) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence for employers' liability;</del></p> <p><del>(ii) Comprehensive Commercial General Liability (including personal injury &amp; property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence and WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) aggregate;</del></p> <p><del>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per occurrence; and</del></p> <p><del>(iv) Professional Malpractice Liability with a limit of not less than WRITTEN AMOUNT Dollars (\$NUMBER AMOUNT) per claim.</del></p> <p><del>(e) The following information applicable to each type of insurance coverage:</del></p> <p><del>(i) Coverage Description,</del></p> <p><del>(ii) Exceptions and Exclusions,</del></p> <p><del>(iii) Policy Effective Date,</del></p> <p><del>(iv) Policy Expiration Date, and</del></p> <p><del>(v) Limit(s) of Liability.</del></p>	
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~~Option: Audited Financial Statements.~~



Add the following row to the RFQ Attachment A table (after the model items) ONLY IF the anticipated contract amount is  $\geq$  \$1,000,000.00 AND extraordinary effort to assure Respondent financial stability/responsibility is appropriate:

<b>A.#</b>	<p><del>Provide the Respondent's most recent independent audited financial statements.— Said independent audited financial statements <u>must</u>:</del></p> <p><del>(1) reflect an audit period for a fiscal year ended within the last 36 months</del></p> <p><del>(2) be prepared with all monetary amounts detailed in United States currency;</del></p> <p><del>(3) be prepared under United States Generally Accepted Accounting Principles (US GAAP);</del></p> <p><del>(4) include: the auditor's opinion letter; financial statements; and the notes to the financial statements; and</del></p> <p><del>(5) be deemed, in the sole discretion of the State to reflect sufficient financial stability to undertake the subject agreement with the State.</del></p> <p><b>NOTES:</b></p> <ul style="list-style-type: none"> <li><del>• Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will <u>not</u> be accepted.</del></li> <li><del>• All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status <u>must</u> be properly licensed to render such opinions.— The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.</del></li> </ul>	
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**Option: Audited Financial Statements — Line of Credit Option.**

~~Privately held companies may not have or be willing to release audited financial statements for public review. Therefore, requiring audited financial statements (as detailed above) without an alternative to the requirement could conceptually prevent privately held companies from responding to the RFQ.~~

~~The contracting agency should consider the possible impact of the requirement on competition versus the state's need to reasonably determine the financial stability/responsibility of respondents and decide whether it is appropriate to include an alternative to the requirement.~~

Insert the following paragraph before the "NOTES" in the optional audited financial statements requirement text (above) if appropriate.

**OR**, in lieu of the aforementioned independent audited financial statements, provide a financial institution's letter of commitment for a general Line of Credit in the amount of **WRITTEN AMOUNT  $\geq$  ONE MILLION DOLLARS (\$NUMBER AMOUNT)**, U.S. currency, available to the Respondent.— Said letter must specify the Respondent's name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least **PERIOD  $\geq$  6 MONTHS**.

**Option: Audited Financial Statements — Additional Requirement.**

Add the following sentence at the end of the second bulleted note in the optional audited financial statements requirement text ~~ONLY IF the contracting agency legal counsel recommends it in writing.~~

~~Any attest or review of the financial status of a Tennessee corporation must be rendered by an accountant or accounting firm licensed or otherwise specifically permitted to provide an attest or review by the Tennessee Board of Accountancy.~~

**~~Option: Proposal Bond Confirmation.~~**

Add the following row to the RFQ Attachment A table ~~ONLY IF a Proposal Bond is required by the Chief Procurement Officer. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract.~~

	<b><del>A.#</del></b>	<del>Provide a proposal bond issued by a surety company licensed to do business in the State of Tennessee in the amount of \$_____.</del>	
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**~~Contingent Requirement: Performance Bond Confirmation.~~**

Add the following row to the RFQ Attachment A table ~~ONLY IF a Performance Bond is proposed.~~

	<b><del>A.#</del></b>	<del>Provide a statement confirming that, if awarded a contract pursuant to this RFQ, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFQ. The statement must be signed by an individual with legal authority to bind the proposing entity to the provisions of this RFQ and any contract awarded pursuant to it.</del>	
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**~~Option: Additional Mandatory Requirements.~~**

~~Typically, each mandatory requirement item must be drafted such that an objective “yes/no” determination of whether the requirement was met is reasonable and adequate (clearly not necessitating a qualitative evaluation of the response).~~

~~Contracting agency staff may be asked to provide evidence that a proposed mandatory requirement is not inappropriately arbitrary or capricious (e.g., (1) information from an independent, authoritative source indicating that the proposed criteria is a reasonable standard; and (2) a recommendation signed by the contracting agency legal counsel explaining why the proposed requirement is not arbitrary or capricious).~~

Add mandatory requirement items to the RFQ Attachment A table (after the model items) as appropriate. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Do not include an arbitrary mandatory requirement.

**PROOF OF FINANCIAL  
RESPONSIBILITY –RFQ TEMPLATE**

**CLEAN**

**REQUEST: Revise the RFQ Instructions, Considerations, and Options as follows:**

**ATTACHMENT A: TECHNICAL RESPONSE & EVALUATION GUIDE**

**Proof of Financial Ability to Perform**

One or more of the following optional provisions for a respondent to show its financial ability to perform must be added to RFQ Attachment A table if appropriate. Solicitation coordinators should consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or services being procured. In the interests of flexibility, one or more of the following optional provisions must be utilized.

**Option: Bank Reference**

Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of a bank reference as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide a current bank reference indicating that the Respondent maintains a satisfactory business relationship with the financial institution. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
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**Option: Credit References**

Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of vendor credit references as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
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**Option: Financial Documentation**

Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of a credit bureau report as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	<p>Provide at least one of the following financial documents dated within the last three (3) months: (1) an official document or letter from an accredited credit bureau, indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.); (2) income statement, indicating the Respondent’s financial operations; or (3) balance sheet, showing the Respondent’s flow of funds.</p> <p>Any documentation disclosing the amount of cash flows from operating activities should be for the Respondent’s most current operating period and must indicate whether the cash flows are positive or negative. If the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.</p> <p>NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent’s financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof of such</p>	
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		licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.
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**Option: Credit Rating**

Add the following row to the RFQ Attachment A table (after the template items) if appropriate to require the submission of a credit rating as evidence of Respondent’s financial responsibility.

	<b>A.#.</b>	Provide a current credit rating from Moody’s, Standard & Poor’s, A.M. Best or Fitch Ratings, verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent.
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**Option: Credit Rating – Credit Bureau Report Option.**

**Some companies may not have an official credit rating from one of the four major credit rating services. Therefore, requiring credit ratings (as detailed above) without an alternative to the requirement could conceptually prevent certain companies from responding to the RFQ.**

**The procuring agency should consider the possible impact of the requirement on competition versus the State’s need to reasonably determine the financial responsibility of respondents and decide whether it is appropriate to include an alternative to the requirement.**

Insert the following paragraph in the optional credit rating requirement text (above) if appropriate.

**OR**, in lieu of the aforementioned credit rating, provide an official document or letter from an accredited credit bureau, dated within the last three (3) months and indicating a satisfactory credit score for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will not be considered responsive.)

**Option: Certificate of Insurance.**

Add the following row to the RFQ Attachment A table (after the template items) ONLY IF a Certificate of Insurance is considered necessary evidence of contractor financial responsibility. (Specifying insurance requirements in the *pro forma* contract does not necessitate adding this optional response requirement.)

Add, delete, or revise subsections detailing insurance coverage requirements as appropriate. (If this response requirement item is added to the RFQ, the appropriate Insurance provision must be detailed in the *pro forma* contract. The insurance coverage requirements specified in both the RFQ and the *pro forma* contract must be the same.)

	<b>A.#.</b>	Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following: (a) Name of the Insurance Company (b) Respondent’s Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverages: (i) Workers’ Compensation/ Employers’ Liability with a limit not less than the relevant statutory amount or <b>WRITTEN AMOUNT</b> Dollars ( <b>\$NUMBER AMOUNT</b> ) per occurrence for employers’ liability;	
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		<p>(ii) Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence and <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) aggregate;</p> <p>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per occurrence; and</p> <p>(iv) Professional Malpractice Liability with a limit of not less than <b>WRITTEN AMOUNT</b> Dollars (<b>\$NUMBER AMOUNT</b>) per claim.</p> <p>(e) The following information applicable to each type of insurance coverage:</p> <p>(i) Coverage Description,</p> <p>(ii) Exceptions and Exclusions,</p> <p>(iii) Policy Effective Date,</p> <p>(iv) Policy Expiration Date, and</p> <p>(v) Limit(s) of Liability.</p>	
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**Option: Audited Financial Statements.**

Add the following row to the RFQ Attachment A table (after the template items) ONLY IF the anticipated contract amount is  $\geq$  \$1,000,000.00 AND extraordinary effort to assure contractor financial responsibility is appropriate.

	<b>A.#.</b>	<p>Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements <u>must</u>:</p> <p>(1) reflect an audit period for a fiscal year ended within the last 36 months;</p> <p>(2) be prepared with all monetary amounts detailed in United States currency;</p> <p>(3) be prepared under United States Generally Accepted Accounting Principles (US GAAP);</p> <p>(4) include the auditor's opinion letter; financial statements; and the notes to the financial statements; and</p> <p>(5) be deemed, in the sole discretion of the State to reflect sufficient financial stability to undertake the subject contract with the State if awarded pursuant to this RFQ.</p> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will <u>not</u> be accepted.</li> </ul>	
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	<ul style="list-style-type: none"> <li>All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof that the person or entity who renders an opinion regarding the Respondent's financial status is licensed, including the license number and state in which the person or entity is licensed.</li> </ul>	
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**Option: Audited Financial Statements – Line of Credit Option.**

Privately held entities may not respond to a RFQ if there is a risk that their audited financial statements will be available for public review. Therefore, requiring audited financial statements (as detailed above) without an alternative to this requirement could limit competition or involvement by privately held entities.

The procuring agency should weigh the impact of the financial statement requirement on competition versus the state's need to reasonably determine the financial stability/responsibility of Respondents and whether a suitable alternative to a financial statement is available.

Insert the following paragraph before the "NOTES" in the optional audited financial statements requirement text (above) if appropriate.

**OR**, in lieu of the aforementioned independent audited financial statements, provide a financial institution's letter of commitment for a general Line of Credit in the amount of **WRITTEN AMOUNT ≥ ONE MILLION DOLLARS (\$NUMBER AMOUNT)**, U.S. currency, available to the Respondent. Said letter must specify the Respondent's name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least **PERIOD ≥ 6 MONTHS**.

**Option: Audited Financial Statements – Additional Requirement.**

Add the following sentence at the end of the second bulleted note in the optional audited financial statements requirement text **ONLY IF** the contracting agency legal counsel recommends it in writing.

Any attest or review of the financial status of a Tennessee corporation must be rendered by an accountant or accounting firm licensed or otherwise specifically permitted to provide an attest or review by the Tennessee Board of Accountancy.

**Contingent Requirement: Performance Bond Confirmation.**

Add the following row to the RFQ Attachment A table **ONLY IF** a Performance Bond is proposed.

	<b>A.#.</b>	Provide a statement confirming that, if awarded a contract pursuant to this RFQ, the Respondent shall deliver a Performance Bond to the State in accordance with the requirements of this RFQ. The statement must be signed by an individual with legal authority to bind the Respondent to the provisions of this RFQ and any contract awarded pursuant to it.	
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**Option: Proposal Bond Confirmation.**

Add the following row to the RFQ Attachment A table ONLY IF a Proposal Bond is required by the Chief Procurement Officer. All proposal bond amounts shall be stated as a set amount or as a percentage of the contract value. In no event shall the proposal bond amount exceed five percent (5%) of the estimated value of the contract.

	<b>A.#.</b>	Provide a proposal bond issued by a surety company licensed to do business in the State of Tennessee in the amount of \$____.	
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**Option: Additional Mandatory Requirements.**

Typically, each mandatory requirement item must be drafted such that an objective “yes/no” determination of whether the requirement was met is reasonable and adequate (clearly not necessitating a qualitative evaluation of the response).

Contracting agency staff may be asked to provide evidence that a proposed mandatory requirement is not inappropriately arbitrary or capricious (e.g., (1) information from an independent, authoritative source indicating that the proposed criteria is a reasonable standard; (2) a recommendation signed by the contracting agency legal counsel explaining why the proposed requirement is not arbitrary or capricious); or other evidence that a proposed mandatory requirement is rationally related to the procurement goals).

Add mandatory requirement items to the RFQ Attachment A table (after the template items) as appropriate. Do not include a mandatory requirement that entails a response that should or must be more subjectively evaluated. Do not include an arbitrary mandatory requirement. To prevent unnecessary delays, submit evidence that supports the inclusion of a proposed mandatory requirement.



**EMERGENCY PURCHASES E-FORM  
UPDATE**

**REDLINE**

# Emergency Purchase Authorization Request

Use this document to request approval for an Emergency Purchase from the Chief Procurement Officer. Note: this Request is not required when TEMA is the procuring State Agency. All information required on this Request Document should be entered and routed for approval in Edison. For additional guidance, please see the EFORMS Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

An Emergency Purchase may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment. Please refer to the [Procurement Procedures Manual of the Central Procurement Office](#) for more details.

An approved Emergency Purchase Authorization Request must be uploaded to any Contract or Purchase Order executed pursuant to this approval. Any Purchase Order resulting from this request should be coded as PEP.

<b>Agency request tracking # (as applicable)</b>	
<b>1. Procuring Agency</b>	
<b>2. Edison contract ID # or Purchase Order #</b> <i>Note: If this Request is amending or supplementing a previously approved EFORM, please also include that Emergency Purchase Request EFORM # for reference.</i>	
<b>3. Edison Vendor Identification #</b>	
<b>2.4. Scope of Goods or Services Caption:</b>	
<b>3.5. Contractor Name:</b>	
<b>4.6. Contract's Effective Date:</b>	
<b>5.7. Contract Term:</b>	Months
<b>6.8. Contract's Maximum or Estimated Liability:</b>	\$
<b>7.9. Describe in detail the circumstances leading to this emergency procurement:</b>	
<b>8.10. Describe the procurement related actions that have been taken in response to the emergency. Include the procurement methods used.</b>	

**9.11.** Describe due diligence the agency performed to ensure the State received the best pricing and terms and conditions available in the marketplace under the circumstances (e.g., number of vendors contacted, etc.). Add attachments as needed.

**40.12.** Provide a complete list of goods or services, including price and total purchase amount:

**13. Provide information related to the total funding for the emergency purchase agreement and funding source.**

**44.14.** Are any additional purchases expected? If yes, include the expected price and total purchase amounts as applicable.

**Signature of Agency head or designee and date**

**[Either upload signed RER to e-Forms in Edison or capture authorized agency approval in Edison Workflow]**

**EMERGENCY PURCHASES E-FORM  
UPDATE**

**CLEAN**

# Emergency Purchase Authorization Request

Use this document to request approval for an Emergency Purchase from the Chief Procurement Officer. Note: this Request is not required when TEMA is the procuring State Agency. All information required on this Request Document should be entered and routed for approval in Edison. For additional guidance, please see the EFORMS Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

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<b>1. Procuring Agency</b>	
<b>2. Edison contract ID # or Purchase Order #</b> Note: If this Request is amending or supplementing a previously approved EFORM, please also include that Emergency Purchase Request EFORM # for reference.	
<b>3. Edison Vendor Identification #</b>	
<b>4. Scope of Goods or Services Caption:</b>	
<b>5. Contractor Name:</b>	
<b>6. Contract's Effective Date:</b>	
<b>7. Contract Term:</b>	Months
<b>8. Contract's Maximum or Estimated Liability:</b>	\$
<b>9. Describe in detail the circumstances leading to this emergency procurement:</b>	
<b>10. Describe the procurement related actions that have been taken in response to the emergency. Include the procurement methods used.</b>	

**11. Describe due diligence the agency performed to ensure the State received the best pricing and terms and conditions available in the marketplace under the circumstances (e.g., number of vendors contacted, etc.). Add attachments as needed.**

**12. Provide a complete list of goods or services, including price and total purchase amount:**

**13. Provide information related to the total funding for the emergency purchase agreement and funding source.**

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**Signature of Agency head or designee and date**

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**PROCUREMENT PROCEDURES  
MANUAL OF THE CPO, § 7. MANAGING  
THE RELATIONSHIP WITH THE  
CONTRACTING PARTY**

**REDLINE**

**REQUEST: Revise section 7 of the Procurement Procedures Manual of the Central Procurement Office as follows:**

**7. Managing the Relationship with the Contracting Party.**

Once a contract has been awarded and duly approved, a contractual relationship exists between the State and the awarded respondent. The procurement professional responsible for managing the contract should do all of the following:

- Maintain a detailed, written audit trail of all discussions and agreements.
- When documenting contracting party tasks, the operative phrase is “the contracting party shall.”
- Get a written commitment from contracting party team members, escalation, etc.
- Clearly define roles and responsibilities.
- The rules of engagement may include onsite attendance requirements if necessary, but if so, these requirements should be clearly communicated.
- Clearly define and communicate any implementation strategies.
- Reserve the right to review contracting party designs and request necessary changes.
- Request submittal of any project plans in advance for approval.
- Request submittal of test plans in advance for approval.
- Specify documentation required from the contracting party, including media and format.
- Specify support and maintenance to be provided the contracting party or the State.
- Prearrange change control processes and pricing to address scope creep.



Specify that any training provided by the contracting party, the cost of which is not included in the contract price, must be preapproved by the appropriate State official.

In some instances, the procurement professional may also be responsible for completing a scorecard to evaluate the Contracting Party's performance. Generally, inclusion of a scorecard may be approved when a solicitation is complex; involves a significant amount of State spend (e.g., over twenty million dollars (\$20,000,000)); or presents other unique risks that preponderate in favor of including a scorecard.

The Supplier Scorecard module in Edison may be utilized to help facilitate the scorecard evaluation process. Prior to beginning a scorecard evaluation in Edison for the first time, a Procurement Professional must submit an Edison security request to access the Supplier Scorecard module in Edison.

To avoid the inadvertent disclosure of confidential information, the Supplier Scorecard feature in Edison should not be utilized for Contracting Parties that have been identified as providing confidential contracts under the Tennessee Public Records Act (see Tenn. Code Ann. § 10-7-504(i) and the STS endorsement, when applicable).

If the Procurement Professional decides to utilize the scorecard, then the scorecard shall be utilized to measure the Contracting Party's performance against the requirements and obligations as specified in the Contract. The Procurement Professional submitting the evaluation should carefully review the Contract requirements; consult State Agency end users as needed; and have specified knowledge of the Contracting Party's performance.

The frequency of reviews should reflect State Agency resources and the State Agency's desired outcomes with respect to Contract Management. The frequency of reviews should be consistent with the contract term, calendared, and include adequate time set aside for evaluations.

Before submitting an evaluation, any commentary should be carefully reviewed by the evaluator's supervisor to ensure that all entries are proofread; accurate; and professional. Also, prior to entering an unsatisfactory evaluation or score, the Procurement Professional should have a CPO specialist to review and approve the score to ensure against bias, favoritism of the Contracting Party's competitors, personality conflicts or other matters not reflecting on the Contracting Party's performance.

After submitting an evaluation score, the Procurement Professional shall provide an opportunity to discuss scorecard evaluations with the Contracting Party. This will enable both parties to better understand expectations. This should also be used as an opportunity to remove misunderstandings of requirements and for the evaluator to offer feedback to the Contracting Party to improve the Contractor's performance relative to contract requirements. The Contracting Party debriefing should also provide the Contracting Party with an opportunity to

provide supplemental or rebuttal information that would cause the State to change or improve its score. All scoring should be fair, transparent, and timely. Evaluation results may be utilized as a Contract Management tool to determine whether or not the State will exercise any renewal or extension options under the Contract.

**PROCUREMENT PROCEDURES  
MANUAL OF THE CPO, § 7. MANAGING  
THE RELATIONSHIP WITH THE  
CONTRACTING PARTY**

**CLEAN**

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In some instances, the procurement professional may also be responsible for completing a scorecard to evaluate the Contracting Party's performance. Generally, inclusion of a scorecard may be approved when a solicitation is complex; involves a significant amount of State spend (e.g., over twenty million dollars (\$20,000,000)); or presents other unique risks that preponderate in favor of including a scorecard.

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If the Procurement Professional decides to utilize the scorecard, then the scorecard shall be utilized to measure the Contracting Party's performance against the requirements and obligations as specified in the Contract. The Procurement Professional submitting the evaluation should carefully review the Contract requirements; consult State Agency end users as needed; and have specified knowledge of the Contracting Party's performance.

The frequency of reviews should reflect State Agency resources and the State Agency's desired outcomes with respect to Contract Management. The frequency of reviews should be consistent with the contract term, calendared, and include adequate time set aside for evaluations.

Before submitting an evaluation, any commentary should be carefully reviewed by the evaluator's supervisor to ensure that all entries are proofread; accurate; and professional. Also, prior to entering an unsatisfactory evaluation or score, the Procurement Professional should have a CPO specialist to review and approve the score to ensure against bias, favoritism of the Contracting Party's competitors, personality conflicts or other matters not reflecting on the Contracting Party's performance.

After submitting an evaluation score, the Procurement Professional shall provide an opportunity to discuss scorecard evaluations with the Contracting Party. This will enable both parties to better understand expectations. This should also be used as an opportunity to remove misunderstandings of requirements and for the evaluator to offer feedback to the Contracting Party to improve the Contractor's performance relative to contract requirements. The Contracting Party debriefing should also provide the Contracting Party with an opportunity to

provide supplemental or rebuttal information that would cause the State to change or improve its score. All scoring should be fair, transparent, and timely. Evaluation results may be utilized as a Contract Management tool to determine whether or not the State will exercise any renewal or extension options under the Contract.

# **CONTRACTOR SCORECARD TEMPLATE**

**NEW**

## CONTRACTOR SCORECARD TEMPLATE

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Under CPO Rules, the CPO is responsible for management of all Statewide Contracts. The procuring State Agency shall be responsible for contract management of all contracts procured by the CPO on behalf of the State Agency or within their delegated authority. The scorecard's purpose is to aid in the contract management process by facilitating a uniform way to evaluate contractor performance. This template prescribes the format and content for contracts involving the incorporation of a contractor scorecard. A contractor scorecard is optional and may be appropriate in complex solicitations that involve a significant amount of State spend (e.g., over twenty million dollars (\$20,000,000) and longer than 12 months; or presents other unique risks that preponderate in favor of including a scorecard). To assist with maintaining confidentiality of Contractor's names, the Contractor Scorecard feature in Edison should not be utilized for Suppliers identified as providing confidential contracts under the Tennessee Public Records Act (see Tenn. Code Ann. §10-7-504(i)). For assistance with using the Edison Contractor Scorecard Module please visit: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>. Note any Deviations from this template require an approved Rule Exception Request.

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Procurement professionals shall complete text fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name**, **amount**, **will/will not**) as indicated with appropriate font and color and add the following as a new Scope item in the *pro forma* Contract.

### Contractor Scorecard

If the Contractor's performance will utilize the Contractor Scorecard, insert the following as a contract term, at section A.#. Scope, to put the Contractor on notice and to communicate expectations.

A.#. Contractor Scorecard. During the course of this Contract, Contractor performance may be measured against the desired outcomes utilizing the Contractor Scorecard metrics substantially similar to those included as Contract Attachment **[Insert Reference]**. The State will complete a Contractor Scorecard every **number (#)** months. The State will conduct a de-briefing with the Contractor to discuss scores and opportunity to improve scores. In the event the Contractor receives a score of **AMOUNT (#)** or less, the Contractor may submit additional information for the State's reconsideration of the evaluation or request an opportunity to discuss the evaluation with the Contract Administrator or his or her designee. Evaluation results may be utilized to determine whether or not the State will exercise any renewal or extension options under the Contract.

### Contractor Scorecard Template Metrics, Attachment

Due to the unique nature of performance metrics essential to each Contract's success, modify metrics as needed to meet the specific requirements and performance metrics particular to the Contract. In general, all metrics should be able to be measured objectively. Customize one or more questions as needed.



**Contractor Scorecard**

<b>Contractor Name:</b>		
<b>Completed By Name &amp; Agency Role:</b>		<b>Date:</b>
<b>Evaluation Question:</b>	<b>Evaluation Score 0 = lowest (worst) - 5 = highest (best) or N/A</b>	<b>Comments: (Optional)</b>
<b>Compliance with Contract specifications:</b>  1. Have the quality of goods or services provided by the Contractor met the State's expectations?		
<b>Timeliness:</b>  2. Were the goods or services provided by the Contractor delivered or provided on time?		
<b>Customer Service:</b>  3. Are phone calls and emails promptly returned?		
4. Is the Contractor knowledgeable about products or services and able to adequately address questions, concerns, or resolve issues?		
5. If there was a defect or other problem, did the Contractor remedy these issues within an acceptable time period?		
<b>Documentation:</b>  6. Are invoices submitted in a timely manner and correctly?		
7. Are any reports submitted timely, correctly, and as requested?		

**PUBLICATION 1075 ATTACHMENT  
(UPDATE)**

**REDLINE**

**REQUEST: Update the Protection of Federal Tax Information Attachment as follows:**

**Protection of Federal Tax Information**

Add ~~one of the following options below~~ **as a separate attachment** to the Contract for Contractors having access to Federal Tax Information (“FTI”) during performance of the Contract. If unsure whether to include ~~one of the options~~ the attachment below, contact your agency’s disclosure officer and legal counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency, or the State Agency disclosing FTI in the instance of SWCs, shall provide the IRS at least forty-five (45) days notice before executing the Contract.

Please consult the most recent version of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies from the IRS Safeguards Program website. Please see section 1.9.1. that provides “Disclosure of FTI is prohibited unless authorized by statute. Agencies with access to FTI are not allowed to make further disclosures of that information to their agents, contractor, or sub-contractor unless authorized by statute. See NIST Control AC-21, Information Sharing. Agencies must use specific language in their contractual agreements that clearly state the requirements necessary to protect the confidentiality of FTI and avoid ambivalence or ambiguity (see the model language of Exhibit 7). For additional requirements on contracts, see Exhibit 6, Contractor 45-Day Notification Procedures.” Use Option #1 when the Contractor may have access to hard copies of FTI. Use Option #2 —when the Contractor may have access to electronic forms of FTI.

**Option 1**

**ATTACHMENT REFERENCE**

~~**FEDERALLY MANDATED REQUIREMENTS FOR SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION**~~

~~Federal Tax Information (“FTI”) includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.~~

~~**CONTRACT LANGUAGE FOR GENERAL SERVICES**~~

~~**I. PERFORMANCE**~~

~~In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:~~

- ~~(1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.~~
- ~~(2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.~~
- ~~(3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.~~
- ~~(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.~~
- ~~(5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.~~
- ~~(6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.~~
- ~~(7) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.~~
- ~~(8) (Include any additional safeguards that may be appropriate.)~~

## **II. CRIMINAL/CIVIL SANCTIONS**

- ~~(1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.~~
- ~~(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or~~

~~imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n) 1.~~

- ~~(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or entity not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.~~
- ~~(4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.~~

### ~~III. INSPECTION~~

~~The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.~~

## **Option 2**

~~**FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES  
CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION**~~

~~Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.~~

~~**CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES**~~

~~**I. PERFORMANCE**~~

~~In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:~~

- ~~(1) All work will be done under the supervision of the Contractor or the Contractor's employees.~~
- ~~(2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.~~
- ~~(3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.~~
- ~~(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.~~
- ~~(5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.~~
- ~~(6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with~~

~~a statement containing the date of destruction, description of material destroyed, and the method used.~~

- ~~(7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.~~
- ~~(8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.~~
- ~~(9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.~~
- ~~(10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.~~
- ~~(11) (Include any additional safeguards that may be appropriate.)~~

## ~~II. CRIMINAL/CIVIL SANCTIONS~~

- ~~(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.~~
- ~~(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages,~~

~~plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.~~

- ~~(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.~~
- ~~(4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.~~

### ~~III. INSPECTION~~

~~The IRS and the State, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.~~

#### I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

(1) All work will be performed under the supervision of the Contractor.

(2) The Contractor and Contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The



Contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.

- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection or disclosure of FTI to anyone other than the Contractor or the Contractor's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The Contractor will certify that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by the Contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the IRS.
- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this Contract apply to performing services with FTI, the Contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this Contract assumes toward the Contractor, and the subcontractor shall assume toward

the Contractor all the same obligations, duties and responsibilities which the Contractor assumes toward the agency under this Contract.

(11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this Contract apply to the subcontractor, and the subcontractor is bound and obligated to the Contractor hereunder by the same terms and conditions by which the Contractor is bound and obligated to the agency under this Contract.

(12) For purposes of this Contract, the term "Contractor" includes any officer or employee of the Contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The agency will have the right to void the Contract if the Contractor fails to meet the terms of FTI safeguards described herein.

## **II. CRIMINAL/CIVIL SANCTIONS**

(1) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(3) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a.

Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

## **II. INSPECTION**

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with FTI safeguard requirements.

**PUBLICATION 1075 ATTACHMENT  
(UPDATE)**

**CLEAN**

**REQUEST: Update the Protection of Federal Tax Information Attachment as follows:**

**Protection of Federal Tax Information**

Add the following *as a separate attachment* to the Contract for Contractors having access to Federal Tax Information (“FTI”) during performance of the Contract. If unsure whether to include the attachment below, contact your agency’s disclosure officer and legal counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency, or the State Agency disclosing FTI in the instance of SWCs, shall provide the IRS at least forty-five (45) days notice before executing the Contract.

Please consult the most recent version of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies from the IRS Safeguards Program [website](#). Please see section 1.9.1. that provides “Disclosure of FTI is prohibited unless authorized by statute. Agencies with access to FTI are not allowed to make further disclosures of that information to their agents, contractor, or sub-contractor unless authorized by statute. See NIST Control AC-21, Information Sharing. Agencies must use specific language in their contractual agreements that clearly state the requirements necessary to protect the confidentiality of FTI and avoid ambivalence or ambiguity (see the model language of Exhibit 7). For additional requirements on contracts, see Exhibit 6, Contractor 45-Day Notification Procedures.”

**ATTACHMENT REFERENCE**

**I. PERFORMANCE**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor.
- (2) The Contractor and Contractor’s officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The Contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection or disclosure of FTI to anyone other than the Contractor or the Contractor’s officers or employees authorized is prohibited.

- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The Contractor will certify that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by the Contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the IRS.
- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this Contract apply to performing services with FTI, the Contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this Contract assumes toward the Contractor, and the subcontractor shall assume toward the Contractor all the same obligations, duties and responsibilities which the Contractor assumes toward the agency under this Contract.
- (11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this Contract apply to the subcontractor, and the subcontractor is bound and obligated to the Contractor hereunder by the same terms and conditions by which the Contractor is bound and obligated to the agency under this Contract.

(12) For purposes of this Contract, the term "Contractor" includes any officer or employee of the Contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The agency will have the right to void the Contract if the Contractor fails to meet the terms of FTI safeguards described herein.

## **II. CRIMINAL/CIVIL SANCTIONS**

(1) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(3) Each officer or employee of a Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

## **II. INSPECTION**

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with FTI safeguard requirements.



**ASSISTANCE LISTING NUMBER  
(FORMERLY KNOWN AS THE CFDA  
NUMBER)**

**REDLINE**

REQUEST: Revise the following CFDA Number References:

Department of Health, GR and GG Templates:

E. #. Assistance Listing Number. CFDA Number(s) When applicable, the Grantee shall inform its licensed independent public accountant of the federal regulations that ~~r~~are to be require compliance with ~~complied within~~ the performance of an audit. This information shall consist of the following ~~Catalog of Federal Domestic Assistance Numbers~~Assistance Listing Numbers: (Insert sSpecific Assistance Listing name(s) and number(s), formerly known as Catalog of Federal Domestic Assistance or CFDA#). is given and it's name}

FA and GU Coversheets:

CFDA Assistance Listing Number#

**ASSISTANCE LISTING NUMBER  
(FORMERLY KNOWN AS THE CFDA  
NUMBER)**

**CLEAN**

**REQUEST:      Revise the following CFDA Number References:**

**Department of Health, GR and GG Templates:**

E. #. Assistance Listing Number. When applicable, the Grantee shall inform its licensed independent public accountant of the federal regulations that require compliance with the performance of an audit. This information shall consist of the following Assistance Listing Numbers: (Insert specific Assistance Listing name(s) and number(s), formerly known as Catalog of Federal Domestic Assistance or CFDA).

**FA and GU Coversheets:**

Assistance Listing Number
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