

CONTRACT #5
RFS # 327.01-00520
FA # Pending

Environment & Conservation

VENDOR:
Megasys Hospitality Systems,
Inc



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

JAMES H. FYKE
COMMISSIONER

PHIL BREDESEN
GOVERNOR

September 3, 2010

RECEIVED

SEP 03 2010

FISCAL REVIEW

James W. White, Executive Director
Fiscal Review Committee
General Assembly of the State of Tennessee
320 Sixth Avenue North, 8th Floor
Nashville, Tennessee 37243

Subject: 32701-00520

Dear Mr. White:

The Department of Environment and Conservation now requests approval for a non-competitive contract with Megasys Hospitality Systems, Inc., for software licensing, upgrades, maintenance, and support for the continuing operation of the Tennessee State Parks hospitality management information system. Megasys has satisfactorily provided the service for ten years. The original contract was procured pursuant to a request for proposals process, with Megasys as a subcontractor. The department has most recently contracted directly with Megasys through a noncompetitive contract approved by the committee.

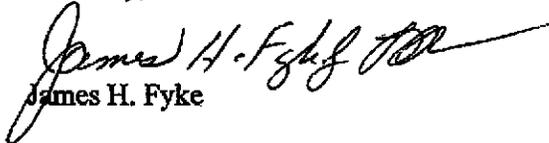
The state has made a significant investment in the existing system that would be lost by converting to a different system. Initial installation of the system in each of the resort parks was a substantial one-time cost (approximately \$1,000,000.00) in the original contract that would be incurred again if a new system were developed – but not under the proposed contract. Approximately 350 state park and central office employees routinely use the system and would require training on any new system. State and contract personnel have expended considerable time and effort recording detailed information into the system about each park's facilities and amenities. This process and other customization would have to be converted, at substantial cost, in implementing a new system. Funds were previously appropriated for the implementation of the hospitality management system. It would not be the best use of state funds to unnecessarily incur the costs again at this time. This service is vital to Tennessee State Parks' revenue-generating operations.

September 3, 2010

This request is not submitted sixty days prior to the contract effective date, as required by the committee's policy. Departmental contract staff had not reviewed the Supplemental Department Information form since last year's revision and was not aware of the requirement to provide estimated cost by deliverable by fiscal year at the time of submission of the request. We had not planned on the time required to obtain the information from the vendor and finalize the details based on anticipated needs.

Thank you for your consideration of this request.

Sincerely,



James H. Fyke

JHF/RR

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Ray Register	*Contact Phone:	532-0216		
*Original Contract Number:		*Original RFS Number:	32701-00520		
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	10/1/2010	*Current End Date:	9/30/2015		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:		Environment and Conservation			
*Division:		Tennessee State Parks			
*Date Submitted:		8/30/10			
*Submitted Within Sixty (60) days:		No			
<i>If not, explain:</i>		Obtaining estimated cost information took longer than planned.			
*Contract Vendor Name:		Megasys Hospitality Systems, Inc.			
*Current Maximum Liability:		\$1,400,000.00			
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY 2015	FY 2016
\$191,000	\$263,000	\$277,500	\$293,500	\$300,000	\$75,000
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					

**Supplemental Documentation Required for
Fiscal Review Committee**

*Contract Funding Source/Amount :	State:	\$1,400,000	Federal:	
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>				
*What were the projected costs of the service for the entire term of the contract prior to contract award?			\$1,400,000	

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY: 2015	FY: 2016
Support	148,023	207,699	222,300	238,071	242,088	60,522
POS Workstation	13,608	19,505	21,454	23,600	25,959	6,641
Credit Card Reader	378	542	595	656	722	185
Receipt Printer	1,593	2,283	2,512	2,762	3,039	778
Kitchen Printer	1,260	1,806	1,987	2,186	2,404	615
Custom or On-Site Work & Recovery Services	19,800	24,600	22,200	19,800	19,200	4,800

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Supplemental Documentation Required for
Fiscal Review Committee

Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 10/01/2010	End Date 09/30/2015	Agency Tracking # 32701-00520	Edison ID
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Contractor Legal Entity Name Megasys Hospitality Systems, Inc.	Registration ID 0000077980
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Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #	FEIN or SSN 73-1349986
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Service Caption (one line only)
Hospitality Management System Services

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	191,000.00				191,000.00
2012	263,000.00				263,000.00
2013	277,500.00				277,500.00
2014	293,500.00				293,500.00
2015	300,000.00				300,000.00
2016	75,000.00				75,000.00
TOTAL:	1,400,000.00				1,400,000.00

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Ownership/Control

African American Asian Hispanic Native American Female

Person w/Disability Small Business Government NOT Minority/Disadvantaged

Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

RFP The procurement process was completed in accordance with the approved RFP document and associated regulations.

Competitive Negotiation The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.

Alternative Competitive Method The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.

Non-Competitive Negotiation The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.

Other The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

OCR USE - FA

Speed Code	Account Code
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NON-COMPETITIVE CONTRACT REQUEST

This request is NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

RECEIVED

AUG 31 2010

FISCAL REVIEW

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

AGENCY REQUEST TRACKING # 32701-00520	
1 PROCURING AGENCY	Department of Environment and Conservation
2 SERVICE	Hospitality Management System Services
3 APPROVAL CRITERIA (select one)	<input checked="" type="checkbox"/> non-competitive negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service
4 PROPOSED CONTRACTOR	Megasys Hospitality Systems, Inc.
5 CONTRACT BEGIN DATE (attach explanation if < 60 days after F&A receipt)	October 1, 2010
6 CONTRACT END DATE (with ALL options to extend exercised)	September 30, 2015
7 MAXIMUM CONTRACT COST (with ALL options to extend exercised)	\$1,400,000.00
8 SERVICE DESCRIPTION	The proposed contractor will provide a software license, upgrades, maintenance, and support for the Tennessee State Parks hospitality management system. The proposed contractor will also implement state-requested software modifications and enhancements.
9 EXPLANATION OF NEED FOR OR REQUIREMENT PLACED ON THE STATE TO ACQUIRE THE SERVICE	A performance audit issued by the Comptroller of the Treasury in August 1997 identified the need for a computerized system for managing reservations, charges and related record, observing that a "manual system is time consuming and more vulnerable to error than an automated system." The hospitality management system is currently implemented at six state parks. The system is used at these parks to manage operations for six inns and conference centers, five golf courses, six restaurants, seven gift shops, six snack bars, and two marinas. Also, it includes a central accounting module that allows the Division of Fiscal Services to access consolidated financial information for all of these operations in real time.
10 HAS THE PROCURING AGENCY EVER BOUGHT THE SERVICE BEFORE ? <input checked="" type="checkbox"/> YES or <input type="checkbox"/> NO IF SO, WHAT PROCUREMENT METHOD WAS USED ?	The agency originally procured the service through a request for proposals process. Subsequently, a noncompetitive contract was procured to continue the service.
11 NAME & ADDRESS OF THE CONTRACTOR'S PRINCIPAL OWNER(S) (NOT required for a TN state education institution)	Mark Jewart, 4770 S. Harvard Ave., Suite 300, Tulsa, OK 74135 Patrick Curry, 4770 S. Harvard Ave., Suite 300, Tulsa, OK 74135

12 EVIDENCE OF THE CONTRACTOR'S EXPERIENCE & LENGTH OF EXPERIENCE PROVIDING THE SERVICE

Megasys has satisfactorily met the state's contract requirements since August 2000 and has consistently demonstrated expertise in the development, implementation, and management of the hospitality management system. The department is extremely satisfied with the contractor's responsiveness and ability to interpret our business requirements. According to the company's website, the proposed contractor began providing hospitality system services in December 1990.

13 OFFICE FOR INFORMATION RESOURCES SUPPORT (required for information technology service)

ATTACHED or NOT APPLICABLE (N/A only to non-information technology service & THDA)

14 eHEALTH INITIATIVE SUPPORT (required for health-related professional, pharmaceutical, laboratory, or imaging service)

ATTACHED or NOT APPLICABLE

15 HUMAN RESOURCES SUPPORT (required for state employee training service)

ATTACHED or NOT APPLICABLE

16 DESCRIPTION OF EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES

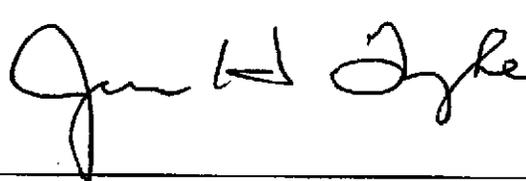
The system software and code are proprietary to the contractor and are not available from any other source. Consequently, the only alternative is the conversion to a new system, which would be cost prohibitive.

17 JUSTIFICATION FOR NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS

The state has made a significant investment in the existing system that would be lost by converting to a different system. Initial installation of the system in each of the resort parks was a substantial one-time cost (approximately \$1,000,000.00) in the original contract that would be incurred again if a new system were developed – but not under the proposed contract. Approximately 350 state park and central office employees routinely use the system and would require training on any new system. State and contract personnel have expended considerable time and effort recording detailed information into the system about each park's facilities and amenities. This process and other customization would have to be converted, at substantial cost, in implementing a new system. Funds were previously appropriated for the implementation of the hospitality management system. It would not be the best use of state funds to unnecessarily incur the costs again at this time.

AGENCY HEAD SIGNATURE & DATE

(MUST be signed & dated by the ACTUAL procuring agency head as detailed on the current Signature Certification on file with OCR— signature by an authorized signatory is acceptable only in documented exigent circumstances)

 8/5/10



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 10/01/2010	End Date 09/30/2015	Agency Tracking # 32701-00520	Edison ID
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Contractor Legal Entity Name Megasys Hospitality Systems, Inc.	Registration ID 0000077980
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Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #	FEIN or SSN 73-1349986
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Service Caption (one line only)
Hospitality Management System Services

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	184,671.00				184,671.00
2012	256,435.00				256,435.00
2013	271,048.00				271,048.00
2014	287,075.00				287,075.00
2015	293,412.00				293,412.00
2016	73,540.00				73,540.00
TOTAL:	1,366,180.00				1,366,180.00

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Ownership/Control

African American
 Asian
 Hispanic
 Native American
 Female
 Person w/Disability
 Small Business
 Government
 NOT Minority/Disadvantaged
 Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

RFP The procurement process was completed in accordance with the approved RFP document and associated regulations.
 Competitive Negotiation The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
 Alternative Competitive Method The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
 Non-Competitive Negotiation The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
 Other The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.	OCR USE - FA	
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Speed Code	Account Code	

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
AND
MEGASYS HOSPITALITY SYSTEMS, INC.**

This Contract, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the "State" and Megasys Hospitality Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of hospitality management system services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 73-1349986

Contractor Place of Incorporation or Organization: Oklahoma

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide its Portfolio hospitality management system service for the six (6) Tennessee State Parks resort parks currently in operation and being served by the Contractor.
- A.3. The Contractor shall provide technical support and maintenance Help Desk services for the Tennessee State Parks hospitality management system 24 hours per day, 7 days per week. This includes technical support and maintenance Help Desk services for the web based internet application backend processing for online reservations. This includes "Software Support Services", "Non-Contractor Support Services", and "Procedural Support" as defined below:
- a. "Software Support Services" means providing technical information, programming corrections and guidance in the use of software programs provided by Contractor, over a voice telephone, VPN or Internet access, for the benefit of State, during Normal Business Hours.
 - b. "Non-Contractor Support Services" means providing technical information and guidance for all other software and hardware related items, not covered by any other definitions in this agreement, including but not limited to the operation of and/or changing, troubleshooting, configuring or correcting problems in computer related components and/or the operating system, cabling, phone/PBX equipment, power lines, modems, etc., whether or not provided by Contractor, by telephone, VPN or Internet access, for the benefit of the State. This service is based on the current knowledge and availability of the Contractor's staff.
 - c. "Procedural Support Services" means any assistance or additional training given to the State or its agents, in the operation of the Contractor's software, during normal business hours.
 - d. "Normal Business Hours" is defined as the time period from 8:00 AM to 5:00 PM Central Time, Monday through Friday, excluding Holidays.
- A.4. The Contractor shall provide technical support and maintenance Help Desk services for the Tennessee State Parks hospitality management system 24 hours per day, 7 days per week.
- A.5. The Contractor shall provide any and all software licensing, such as the ProvideX license, required to continue the hospitality management system functions; however, the Contractor will not have any obligation to provide user licenses in excess of the number of user licenses that Contractor is providing on the date that Contractor executes this agreement.

- A.6. The Contractor shall implement software/system modifications requested by State. Where possible, modifications will be made at the Contractor's locations. Where necessary, modifications and/or training will be done by Contractor's personnel at state resort park locations. The modifications, also referred to as "Customizations" and defined below, apply only to the six (6) parks currently being served by Contractor. Modifications or training performed at the state parks sites is referred to as "On-Site Support Services" and is defined below.
- a. "Customization" means changing or enhancing any Contractor program, at the State's request subsequent to the initial installation, to meet the specific desires of the State.
 - b. "On-site Support Services" means the technical assistance, training, program modification or any other type of user-requested support or aid provided by an employee or agent of the Contractor, at the State's location, for the benefit of the State.
- A.7. The Contractor shall provide "Recovery Support Services", which is defined below, for the hospitality management system when requested by the State. State will pay for these services at the rates listed in Section C.3. depending upon whether or not the services are provide during normal business hours.
- a. "Recovery Support Services" means technical or other such assistance provided by Contractor in an attempt to or actually recover, when possible, lost data, program files, credit card transactions, etc., by telephone, VPN or Internet access, for the benefit of the State, during any and all hours.
 - b. "Normal Business Hours" is defined as the time period from 8:00 AM to 5:00 PM Central Time, Monday through Friday, excluding Holidays.
- A.8. The Contractor warrants that it shall provide whatever modification and/or correction is required during the term of the contract to insure that the system remains integrated.
- A.9. The Contractor shall provide touchscreen point of sale (POS) workstations for the retail outlet locations that utilize the MegaTouch component of the hospitality management system as requested by the State. The Contractor shall provide a UTC Retail 3100 Series workstation. In the event that this equipment is discontinued by the manufacturer, a comparable unit that is of equal or higher value and certified as compatible with the current MegaTouch application shall be provided. All units must have a minimum 3 year warranty.
- A.10. The Contractor shall provide credit card readers for use with the UTC POS workstations at the retail outlet locations that utilize the MegaTouch component of the hospitality management system. The Contractor shall provide a UTC 3 Track MSR (magnetic strip reader). In the event that this equipment is discontinued by the manufacturer, a comparable unit that is of equal or higher value and certified as compatible with the current MegaTouch application and the POS workstations shall be provided. All units must have a minimum 3 year warranty.
- A.11. The Contractor shall provide receipt printers for the retail outlet locations that utilize the MegaTouch component of the hospitality management system as requested by the State. The Contractor shall provide an Epson TMT88 Receipt Printer. In the event that this equipment is discontinued by the manufacturer, a comparable unit that is of equal or higher value and certified as compatible with the current MegaTouch application shall be provided. All units must have a minimum 1 year warranty.
- A.12. The Contractor shall provide kitchen printers for the retail outlet locations that utilize the MegaTouch component of the hospitality management system as requested by the State. The Contractor shall provide an Epson TMU230 Kitchen Printer. In the event that this equipment is discontinued by the manufacturer, a comparable unit that is of equal or higher value and certified as compatible with the current MegaTouch application shall be provided. All units must have a minimum 1 year warranty.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on October 1, 2010 and ending on September 30, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million four hundred thousand dollars (\$1,400,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)				
	10/01/10- 09/30/11	10/01/11- 09/30/12	10/01/12- 09/30/13	10/01/13- 09/30/14	10/01/14- 09/30/15
Maintenance, upgrades and 24x7 support (ref. Sections A.2, A.3, A.4, A.5)	\$16,448 per month	\$17,595 per month	\$18,835 per month	\$20,174 per month	\$20,174 per month
State requested modifications or customizations performed at the Contractor's location (ref. Section A.6)	\$250 per hour (\$100 min.)	\$250 per hour (\$100 min.)	\$250 per hour (\$100 min.)	\$250 per hour (\$100 min.)	\$250 per hour (\$100 min.)
State requested modifications or training performed by the Contractor at State Park sites (ref. Section A.6)	\$250 per hour	\$258 per hour	\$266 per hour	\$274 per hour	\$282 per hour
Recovery services — normal business hours (ref. Section A.7)	\$200 per hour (\$50 min.)	\$200 per hour (\$50 min.)	\$200 per hour (\$50 min.)	\$200 per hour (\$50 min.)	\$200 per hour (\$50 min.)

Recovery services — after normal business hours (ref. Section A.7)	\$300 per hour (\$75 min.)				
Touchscreen point of sale workstation (ref. Section A.9)	\$3,024 each	\$3,326 each	\$3,659 each	\$4,025 each	\$4,427 each
Credit card reader (ref. Section A.10)	\$168 each	\$185 each	\$203 each	\$224 each	\$246 each
Receipt Printer (ref. Section A.11)	\$708 each	\$779 each	\$857 each	\$942 each	\$1,037 each
Kitchen Printer (ref. Section A.12)	\$840 each	\$924 each	\$1,016 each	\$1,118 each	\$1,230 each

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- d. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. The State agrees to charge the Contractor the prevailing state employee rates for lodging and meals when the Contractor's staff are onsite at the State locations for "On-Site Support Services."

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of travel compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations."

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee State Parks, 7th Floor, L & C Tower, 401 Church St., Nashville, TN 37243.

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Environment and Conservation, Tennessee State Parks;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);

- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

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

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and

retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed

or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Andy Lyon, Assistant Commissioner
Tennessee State Parks
7th Floor, L&C Tower
401 Church Street

Nashville, Tennessee 37243
Telephone # 615-532-0001
FAX # 615-532-0732
Andrew.Lyon@tn.gov

The Contractor:
Mark Jewart, President
Megasys Hospitality Systems, Inc.
4770 South Harvard Ave., Suite 300
Tulsa, OK 74135
Telephone # 918-743-0100
FAX # 918-743-9876
mjewart@megasyshms.com

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, et. seq., the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

IN WITNESS WHEREOF,

MEGASYS HOSPITALITY SYSTEMS, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

JAMES H. FYKE, COMMISSIONER

DATE

DRAFT

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION



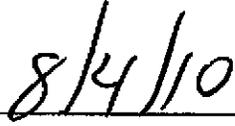
OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-Mail : Jane.Chittenden@tn.gov

FROM : Ray Register, Director of Contract Administration
Department of Environment and Conservation
E-Mail : Ray.T.Register@tn.gov

DATE : July 22, 2010

RE : Request for OIR Pre-Approval Endorsement

APPLICABLE RFS # 32701-00520
OIR ENDORSEMENT SIGNATURE & DATE :
  <hr style="width: 80%; margin: 0 auto;"/> Chief Information Officer
<i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

1 SUBJECT PROCUREMENT DOCUMENT TYPE (mark one) : <input type="checkbox"/> RFP <input type="checkbox"/> Competitive Negotiation Request <input type="checkbox"/> Alternative Procurement Method Request <input checked="" type="checkbox"/> Non-Competitive Contract Request <input type="checkbox"/> Non-Competitive Amendment Request <input type="checkbox"/> Contract <input type="checkbox"/> Contract Amendment <input type="checkbox"/> Grant <input type="checkbox"/> Grant Amendment
2 INFORMATION SYSTEMS PLAN (ISP) PROJECT APPLICABILITY : <input checked="" type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Applicable – ISP PROJECT # RESPONSE CONFIRMED BY : IT DIRECTOR/STAFF PRINTED NAME
3 CONTRACTING AGENCY CONTACT : Regina Clark, Information Systems Manager 253-2504 Regina.Clark@tn.gov

APPLICABLE RFS # 32701-00520

4 SUBJECT INFORMATION TECHNOLOGY SERVICE DESCRIPTION:

The proposed contractor will provide a software license, upgrades, maintenance, and support for the Tennessee State Parks hospitality management system. The proposed contractor will also implement state-requested software modifications and enhancements.

5 REQUIRED ATTACHMENT(S) AS APPLICABLE (copies without signatures acceptable) :

- RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request**
- proposed contract/grant or amendment**
- original contract/grant & any prior amendments**