

CONTRACT #18
RFS # 332.05-038
RV # 08-22768-01

**Tennessee Student Assistance
Corporation (TSAC)**

VENDOR:
**Educational Funding of the
South, Inc.**



STATE OF TENNESSEE
TENNESSEE STUDENT ASSISTANCE CORPORATION

SUITE 1510, PARKWAY TOWERS
404 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0820
(615) 741-1346 • 1-800-342-1663 • FAX (615) 741-6101

RECEIVED

SEP 04 2009

MEMORANDUM

FISCAL REVIEW

TO: Leni Chick, Fiscal Review Committee Contract and Audit Coordinator
FROM: Marcie Mills, Contract Administration Manager
DATE: September 4, 2009
SUBJECT: Non-Competitive Amendment Summary, Educational Funding of the South, Inc.

The Tennessee Student Assistance Corporation (TSAC) proposes to submit a non-competitive Amendment to its Contract with Educational Funding of the South (EdSouth) for the purpose of allowing the current contractor to continue to purchase rehabilitated student loans but at a discounted fee. Additional services currently provided by TSAC to the contractor will remain in place with no changes.

Please find the enclosed materials for review:

- Fiscal Review Summary and Justification
- Supplemental Documentation Required for Fiscal Review Committee
- Contract Summary Sheet
- Contract Amendment Two
- Non-Competitive Amendment Request
- Non-Competitive Amendment Request Attachment (Required if date of Proposed amendment Effective Date is less than sixty (60) days after F&A receipt)
- Amendment One (and supporting documentation)
- Original Contract (and supporting documentation)
- RFP (and supporting documentation)

Should you have any questions, or additional materials are required, please do not hesitate to contact me.



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The Tennessee Student Assistance Corporation (TSAC) proposes to submit a non-competitive Amendment to its Contract with Educational Funding of the South (EdSouth) for the purpose of allowing the current contractor to continue to purchase rehabilitated student loans but at a discounted fee. Additional services currently provided by TSAC to the contractor will remain in place with no changes.

Pursuant to Chapter 413, Public Acts of 2003, TSAC is providing the information below for the review of the Fiscal Review Committee.

Summary of the Terms of the Original Contract

The Contract between TSAC and EdSouth was for the provision of obtaining up to two parties to purchase loans from TSAC through its Loan Rehabilitation Program. Loan Rehabilitation is a service which allows borrowers with defaulted Federal Stafford (subsidized and unsubsidized) Loans, Federal PLUS (parent and graduate/professional) Loans, and Federal Consolidation Loans to remove the default status on their loans and repair their credit history if nine (9) consecutive, on-time, voluntary monthly payments have been made within a ten (10) month period.

The Contract is for the period commencing on October 1, 2007 and ending on September 30, 2012.

Justification for the Proposed Non-Competitive Amendment:

When the RFP for the original contract was issued, the economy was much stronger and purchases of rehabilitated loans were more common, however, even under those circumstances only two bidders responded. Both bidders were awarded a portion of the contract but one of these bidders terminated the contract prior to purchasing any loans due to last-minute concerns regarding familiarity with purchasing these types of loans. This left EdSouth as the only respondent (and current contractor).

Since that time the financial market virtually collapsed, impacting all guaranty agencies and their ability to secure purchases of rehabilitated loans. Prior to the collapse, guaranty agencies were able to sell rehabilitated loans on a regular (usually monthly) basis. Since

mid-2008, however, available capital to purchase these loans has almost disappeared. More recently, funds have become available through the U.S. Department of Education's "conduit" program, whereby privately-raised funds, backed by the Department, are pooled to purchase large blocks of rehabilitation loans, but on a less frequent basis.

Justification for the Non-competitive Procurement:

At the present time there is no reasonable competitive alternative. EdSouth's expertise and ability to work with both TSAC and the Department of Education on purchases will enable the purchases to be made in a timely and efficient manner.

Explanation if Submitted Less Than Sixty Days Before Effective Date

Due to the liquidity issues in the financial markets, Edsouth had to suspend the monthly purchases of rehabilitation loans. In order to continue to support students who have rehabilitated their defaulted loans, Edsouth has sought other funding mechanisms in order to purchase defaulted loans. The U. S. Department of Education (USDOE), in cooperation with private investors, has only recently made available a funding mechanism called the Straight-A Conduit and Edsouth has qualified to use this conduit for liquidity to purchase rehabilitated loans for the Federal Stafford and PLUS programs. Approval from USDOE occurred the first week of September and Edsouth is preparing for implementation in October, but the loans to be purchased must be available no later than October 15, 2009.

Because use of the conduit was only recently approved and loans must be available no later than October 15, it is necessary for TSAC to submit this request without providing the required sixty-day notice.

Supplemental Documentation Required for
Fiscal Review Committee

Contact Name:	Peter Abernathy, Senior AED and Staff Attorney	*Contact Phone:	615.532.6065		
*Contract Number:	RV-08-22768-01	*RFS Number:	332.05-038-08		
*Original Contract Begin Date:	10/1/2007	*Current End Date:	9/30/2012		
Current Request Amendment Number: <i>(if applicable)</i>	TWO				
Proposed Amendment Effective Date: <i>(if applicable)</i>	10/1/2009				
*Department Submitting:	Tennessee Student Assistance Corporation				
*Division:	Higher Education				
*Date Submitted:	September 4, 2009				
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	<p>Due to the liquidity issues in the financial markets, Edsouth had to suspend the monthly purchases of rehabilitation loans. In order to continue to support students who have rehabilitated their defaulted loans, Edsouth has sought other funding mechanisms in order to purchase defaulted loans. The U. S. Department of Education (USDOE), in cooperation with private investors, has only recently made available a funding mechanism called the Straight-A Conduit and Edsouth has qualified to use this conduit for liquidity to purchase rehabilitated loans for the Federal Stafford and PLUS programs. Approval from USDOE occurred the first week of September and Edsouth is preparing for implementation in October, but the loans to be purchased must be available no later than October 15, 2009. Because use of the conduit was only recently approved and loans must be available no later than October 15, it is necessary for TSAC to submit the request in less than 60 days.</p>				
*Contract Vendor Name:	Educational Funding of the South, Inc.				
*Current Maximum Liability:	\$0.00 (Revenue Contract)				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2008	FY: 2009	FY: 2010	FY: 2011	FY 2012	FY
\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$

Supplemental Documentation Required for
Fiscal Review Committee

*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY: 2008	FY: 2009	FY: 2010	FY:	FY	FY
\$ 0.00	\$ 0.00	\$ 0.00	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Not applicable		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			Not applicable		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			Not applicable		
*Contract Funding Source/Amount:	State:	NA	Federal:	NA	
Interdepartmental:		NA	Other:	NA	
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>		
April 10, 2008			The Amendment reflected a change to the payment premium percentage for Rehabilitated Loans due to the market conditions at that time.		
Method of Original Award: <i>(if applicable)</i>			RFP		
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>			Not Applicable		
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>			Not Applicable		
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>			Not Applicable		



C O N T R A C T A M E N D M E N T

Agency Tracking # 332.05-038-08	Edison ID	Contract # RV-08-22758-00	Amendment # TWO
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Contractor Educational Funding of the South, Inc.	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input type="checkbox"/> V- 58-1757969
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Amendment Purpose/ Effects
Loan Purchase through the Tennessee Student Assistance Corporation's Loan Rehabilitation Program

Contract Begin Date 10/1/2007	Contract End Date 9/30/2012	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s)
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008					0.00
2009					0.00
2010					0.00
2011					0.00
2012					0.00
TOTAL:					0.00

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

— COMPLETE FOR AMENDMENTS —			Agency Contact & Telephone #	
END DATE AMENDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			James R. Vaden, Associate Executive Director of Fiscal Affairs 615.741.7575	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) 	
2008	0.00	0.00		
2009	0.00	0.00		
2010	0.00	0.00		
2011	0.00	0.00		
2012	0.00	0.00		
TOTAL:	0.00	0.00	Speed Code SA00000049	Account Code DEPT 3320400000

<p>— OCR USE —</p>	<p>Procurement Process Summary (non-competitive, FA- or ED-type only) RFP</p>
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**AMENDMENT TWO
TO RV-08-22768-01**

This Contract Amendment is made and entered by and between the State of Tennessee, Tennessee Student Assistance Corporation, hereinafter referred to as the "State" or "TSAC" and Educational Funding of the South, Inc., or its assignee (a related company), hereinafter referred to as the "Contractor" or "Procuring Party," is for the provision of obtaining up to two parties to purchase loans from TSAC through its Loan Rehabilitation Program. Loan Rehabilitation is a service which allows borrowers with defaulted Federal Stafford (subsidized and unsubsidized) Loans and Federal PLUS (parent and graduate/professional) Loans to remove the default status on their loans and repair their credit history if nine (9) consecutive, on-time, voluntary monthly payments have been made within a ten (10) month period, as further defined in the "SCOPE OF SERVICES." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section A.1. is deleted in its entirety and replaced with the following:

A.1. TSAC, through its contracted servicer, shall have the capability of processing rehabilitated defaulted FFELP loans, including and without limitation, Federal Stafford (subsidized and unsubsidized) Loans and Federal PLUS (parent and graduate/professional) Loans.

2. The text of Contract Section A.8 is deleted in its entirety and replaced with the following:

A.8. TSAC, through its contracted servicer, shall provide a report of all loans that are eligible for rehabilitation in each rehabilitation cycle to the Procuring Party in a mutually agreed upon (either manual or electronic) format. The report shall include, at a minimum:

- Record Identifier
- Borrower Social Security Number,
- Borrower Full Name,
- Borrower Address,
- Borrower Phone Number,
- Borrower DOB,
- Student Social Security Number, if PLUS loan,
- Student Full Name, if a PLUS loan,
- Student Address, if a PLUS loan,
- Student Phone Number, if a PLUS loan,
- Student DOB, if a PLUS loan,
- Loan Type,
- Guarantor ID,
- Guarantee Date,
- Guarantee Amount,
- Interest Rate,
- Principal Outstanding,
- Collection Costs,
- Total Loan Balance,
- Next Due Date,
- Sale Date,
- Reference First Name,
- Reference Middle Initial,
- Reference Last Name,
- Reference Address 1,
- Reference Address 2, and
- Number and Dollar volume of loans to be rehabilitated.

3. The text of Contract Section A.12. is deleted in its entirety and replaced with the following:

- A.12. The Procuring Party shall have the capability of processing rehabilitated defaulted FFELP loans, including and without limitation, Federal Stafford (subsidized and unsubsidized) Loans and Federal PLUS (parent and graduate/professional) Loans.
4. The text of Contract Section A.16 is deleted in its entirety and replaced with the following:
- A.16. Any premiums paid by the Procuring Party shall not be added to the borrower's loan balance.
5. The text of Contract Section A.19 is deleted in its entirety and replaced with the following:
- A.19. The Procuring Party shall provide to TSAC a report that reflects the performance of the rehabilitated loan portfolio regarding delinquency and re-default in a mutually agreed upon (either manual or electronic) format. The report shall include, at a minimum:
- Borrower Social Security Number,
 - Borrower Full Name,
 - Loan Type,
 - Guarantee Date,
 - Rehabilitation Date,
 - Total Loan Balance,
 - Next Due Date,
 - Number of days delinquent,
 - Cure Date
 - Cure Type,
 - Re-default Date, and
 - Default Type.
6. The text of Contract Section C. PAYMENT TERMS AND CONDITIONS is deleted in its entirety and replaced with the following:
- C. PAYMENT TERMS AND CONDITIONS:
- The Procuring Party's remittance for each rehabilitated loan shall consist of an ACH payment on the scheduled effective date of the purchase. This payment will represent the value of the rehabilitated loan, less no more than six hundred (600) basis points of the total loan value. The value of the rehabilitated loan shall include the total of the full principal balance outstanding, accrued interest, and other permissible costs, as defined in Title IV of the Higher Education Act of 1965, as amended, that are payable by the borrower.
- For any federal legislative mandates that increase rehabilitation loan yields, the resulting percentage of change in loan yields shall be applied to decrease the discount basis points to determine the new total value for Rehabilitated Loans.
7. The text of Contract Section E.2. Communications and Contacts is deleted in its entirety and replaced with the following:
- 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 facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.
- The State:

Jane Pennington, Associate Executive Director of Loan Administration
Tennessee Student Assistance Corporation
404 James Robertson Parkway, Suite 1510
Nashville, TN, 37243-0820
jane.pennington@tn.gov
Telephone : 615.741.3000 x 126
FAX: 615.741.6101

The Procuring Party:

Ron Gambill
Educational Funding of the south, Inc.
501 corporate Centre Drive, Suite 320
Franklin, TN 37067
rgambill@edsouth.org
Telephone: 615.771.8505
FAX: 615.771.8276

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the fax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

The revisions set forth herein shall be effective October 1, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

EDUCATIONAL FUNDING OF THE SOUTH:



RON GAMBILL, CHAIRMAN AND CEO

9-4-2009

DATE

TENNESSEE STUDENT ASSISTANCE CORPORATION:



RICHARD G. RHODA, EXECUTIVE DIRECTOR

9.4.09

DATE

APPROVED:

DAVE GOETZ, COMMISSIONER OF FINANCE & ADMINISTRATION

DATE

JUSTIN P. WILSON, COMPTROLLER OF THE TREASURY

DATE

NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

Commissioner of Finance & Administration

1) RFS #	332.05-038-08	
2) Procuring Agency :	TENNESSEE STUDENT ASSISTANCE CORPORATION (TSAC)	
EXISTING CONTRACT INFORMATON		
3) Service Caption :	Loan Purchase through the Tennessee Student Assistance Corporation's Loan Rehabilitation Program	
4) Contractor :	EDUCATIONAL FUNDING OF THE SOUTH, INC. (EdSouth)	
5) Contract #	RV-08-22768-01	
6) Contract Start Date :	10/1/2007	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	9/30/2012	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 0.00	
PROPOSED AMENDMENT INFORMATON		
9) Amendment #	TWO	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	10/1/2009	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	9/30/2012	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 0.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of 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	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
<p>Because of recent market conditions this Amendment will allow the current contractor to continue to purchase rehabilitated student loans, but at a discounted fee. All services currently provided by TSAC to the contractor will remain in place with no changes.</p>		
15) Explanation of Need for the Proposed Amendment :		
<p>The need for this Amendment is a result of the collapse of the financial market which impacted all guaranty agencies and their ability to secure purchases of rehabilitated loans. Prior to the collapse, guaranty agencies were able to sell rehabilitated loans on a regular (usually monthly) basis. Since mid-2008, however, available capital to purchase these loans has almost disappeared. More recently, funds have become available through the U.S. Department of Education's "conduit" program, whereby privately-raised funds, backed by the Department, are pooled to purchase large blocks of rehabilitation loans, but on a less frequent basis.</p>		
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)		
<p>Contractor is a Corporation Place of incorporation is Tennessee</p>		

Educational Funding of the South, Inc.
 501 Corporate Centre Drive, Suite 320
 Franklin, TN 37067
 Primary Contact: Ron Gambill, Chairman and CEO

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ... Not Applicable to this Request Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ... Not Applicable to this Request Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ... Not Applicable to this Request Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

At the present time there is no reasonable competitive alternative. EdSouth's expertise and ability to work with both TSAC and the Department of Education on purchases will enable the purchases to be made in a timely and efficient manner.

21) Justification for the Proposed Non-Competitive Amendment :

When the RFP for the original contract was issued the economy was much stronger and purchases of rehabilitated loans were more common, however, even under those circumstances only two bidders responded. Both bidders were awarded a portion of the contract but one of these bidders terminated the contract prior to purchasing any loans due to last-minute concerns regarding familiarity with purchasing these types of loans. This left EdSouth as the only respondent (and current contractor). Since that time the market has become even more difficult for lenders to purchase rehabilitated loans and EdSouth's expertise and ability to work with both TSAC and the Department of Education on purchases will enable purchases to be made in a timely and efficient manner.

AGENCY HEAD SIGNATURE & DATE :

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



RICHARD G. RHODA, EXECUTIVE DIRECTOR

9.4.09

DATE

**NON-COMPETITIVE AMENDMENT REQUEST
ATTACHMENT**

ITEM 10) PROPOSED AMENDMENT EFFECTIVE DATE

(Required if date of Proposed amendment Effective Date is less than sixty (60) days after F&A receipt)

Background Information and Justification

The Tennessee Student Assistance Corporation (TSAC) is submitting an Amendment Two to its Contract with Educational Funding of the South, Inc. (EdSouth) that will allow the current contractor to continue to purchase rehabilitated student loans but at a discounted fee. Additional services currently provided by TSAC to the contractor will remain in place with no changes.

When the RFP for the original contract was issued the economy was much stronger and purchases of rehabilitated loans were more common, however, even under those circumstances only two bidders responded. Both bidders were awarded a portion of the contract but one of these bidders terminated the contract prior to purchasing any loans due to last-minute concerns regarding familiarity with purchasing these types of loans. This left EdSouth as the only respondent (and current contractor).

Due to the liquidity issues in the financial markets, Edsouth had to suspend the monthly purchases of rehabilitation loans. In order to continue to support students who have rehabilitated their defaulted loans, Edsouth has sought other funding mechanisms in order to purchase defaulted loans. The U. S. Department of Education (USDOE), in cooperation with private investors, has only recently made available a funding mechanism called the Straight-A Conduit and Edsouth has qualified to use this conduit for liquidity to purchase rehabilitated loans for the Federal Stafford and PLUS programs. Approval from USDOE occurred the first week of September and Edsouth is preparing for implementation in October, but the loans to be purchased must be available no later than October 15, 2009.

Because use of the conduit was only recently approved and loans must be available no later than October 15, it is necessary for TSAC to submit this request without providing the required sixty-day notice. As such, TSAC respectfully requests this requisite be waived.

**AMENDMENT ONE
TO RV-08-22768-00**

This Contract Amendment is made and entered by and between the State of Tennessee, TENNESSEE STUDENT ASSISTANCE CORPORATION (TSAC), hereinafter referred to as the "State" and EDUCATIONAL FUNDING OF THE SOUTH, INC., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section A.4. is deleted in its entirety and replaced with the following:

A.4. The Contractor shall provide a performance measurement report to include:

- The number, dollar value, and percentage of loan which are greater than sixty (60) days delinquent;
- The number, dollar value, and percentage of loans which re-default for non-payment; and
- The number, dollar value, and percentage of loans that were cured and the types of cures effected to cure the account.

"Cure" refers to the method in which an account is brought current (i.e. payments).

2. The text of Contract Section C. PAYMENT TERMS AND CONDITIONS is deleted in its entirety and replaced with the following:

C. PAYMENT TERMS AND CONDITIONS:

The Procuring Party's remittance for each rehabilitated loan shall consist of separate ACH payments on the scheduled effective date of the purchase. The first payment will represent the value of the rehabilitated loan. This value shall be the total of the full principal balance outstanding, accrued interest, and other permissible costs, as defined in Title IV of the Higher Education Act of 1965, as amended, that are payable by the borrower.

The second ACH payment will consist of the premium. The premium shall be the product of the pertinent percentage (see table below) applied to the value of the rehabilitated loan (above).

Percentage Premium per Rehabilitated Loan Amount (rounded to three decimal places - .000)					
10/01/07- 04/09/08	04/10/08 - 9/30/08	10/1/08 - 09/30/09	10/01/09 - 09/30/10	10/01/10 - 09/30/11	10/01/11 - 09/30/12
3.445	1.000	3.445	3.445	3.445	3.445

For any federal legislative mandates that affect rehabilitation loan yields, the resulting percentage of change in loan yields shall be applied to the existing premium percentage to determine the new Premium for Rehabilitated Loan.

The revisions set forth herein shall be effective April 10, 2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

EDUCATIONAL FUNDING OF THE SOUTH, INC.:

Ron Gambill 4-10-2008
RON GAMBILL, CHAIRMEN/CEO DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE STUDENT ASSISTANCE CORPORATION:

Robert W. Ruble (by TRB) 4/16/08
ROBERT W. RUBLE, EXECUTIVE DIRECTOR DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M.D. Goetz, Jr. / agf 4/22/08
M.D. GOETZ, JR., COMMISSIONER DATE

COMPTROLLER OF THE TREASURY:

John G. Morgan 4/28/08
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

REQUEST FOR NON-COMPETITIVE AMENDMENT

C408
#407

6-25-05

2008 APR 23 PM 2:39

COMPTROLLER'S OFFICE
OFFICE OF
MANAGEMENT SERVICES

APPROVED



Commissioner of Finance & Administration

Date: 4/18/08

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #	332.05-038-08	
2) State Agency Name :	TENNESSEE STUDENT ASSISTANCE CORPORATION (TSAC)	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	Loan Purchase through the Tennessee Student Assistance Corporation's Loan Rehabilitation Program	
4) Contractor :	EDUCATIONAL FUNDING OF THE SOUTH, INC. (EdSouth)	
5) Contract #	RV-08-22768-00	
6) Contract Start Date :	October 1, 2007	
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	September 30, 2012	
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	0.00	
PROPOSED AMENDMENT INFORMATION		
9) <u>Proposed</u> Amendment #	ONE	
10) <u>Proposed</u> Amendment Effective Date : (attached explanation required if date is < 60 days after F&A receipt) (ATTACHED)	April 10, 2008	
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	September 30, 2012	
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	0.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of 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	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
The Amendment reflects deletion of language of the Contract that set performance criteria determining placement percentage of rehabilitated loans to Procuring Parties. The Amendment further reflects a change to the payment terms and conditions whereby Contractor shall pay the lower premium percentage on Premiums for Rehabilitated Loans of one percent (1%) in lieu of the current three point four four five percent (3.445%) for a period of six months as noted in the Amendment.		

OGR
APR 14 2008
RECEIVED

15) Explanation of Need for the Proposed Amendment :

TSAC had two Procuring Parties, Educational Funding of the South, Inc. and SunTrust Bank, for the provision of the purchase of rehabilitated loans through its Loan Rehabilitation Program, with said loans to be offered to Procuring Parties as set forth in performance criteria that determined volume of placement percentage of rehabilitated loans. Due to a business decision based on several factors, SunTrust provided notice of inability to participate in the purchase of rehabilitated loans. Due to this withdrawal of SunTrust, EdSouth is now the sole purchaser of rehabilitated loans from TSAC. With the increased volume brought about by SunTrust's withdrawal and the volatility of the financial market, EdSouth is requesting that TSAC allow a six-month period in which a lower percentage premium will be paid on rehabilitated loans.

16) Name & Address of Contractor's Current Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Contractor is a Corporation
Place of incorporation is Tennessee
Educational Funding of the South, Inc.
501 Corporate Centre Drive, Suite 320
Franklin, TN 37067
Primary contact: Ron Gambill, Chairman/CEO

17) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one: Documentation Not Applicable to this Request Documentation Attached to this Request

18) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one: Documentation Not Applicable to this Request Documentation Attached to this Request

19) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one: Documentation Not Applicable to this Request Documentation Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

There are no reasonable and competitive procurement alternatives to this Amendment. There is an existing Contract with the Contractor which provides for the purchase of rehabilitated loans through TSAC's Loan Rehabilitation Program. This Amendment is for a modification of the premium percentage for the purchase of said loans.

21) Justification for the Proposed Non-Competitive Amendment :

The Contract must be amended to remove language specific to the performance criteria determining placement percentage of rehabilitated loans to Procuring Parties due to the withdrawal of SunTrust Bank from the participation of purchasing said loans. This Contract must also be amended to reflect the new premium percentage on Premiums for Rehabilitated Loans for a specified period of time as noted in the Amendment.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

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

Robert W. Ruble

4-10-08

Agency Head Signature

Date

**REQUEST:NON-COMPETITIVE AMENDMENT
ATTACHMENT**

ITEM 10) PROPOSED AMENDMENT EFFECTIVE DATE

(Required if date of Proposed amendment Effective Date is less than sixty (60) days after F&A receipt)

Background Information and Justification

The Tennessee Student Assistance Corporation (TSAC) is submitting an Amendment One to its Contract with Educational Funding of the South, Inc. (EdSouth) reflecting the deletion of language of the contract that set performance criteria determining placement percentage of rehabilitated loans to Procuring Parties and changing the payment terms and conditions whereby Contractor shall pay the lower premium percentage on Premiums for Rehabilitated Loans of one percent (1%) in lieu of the current three point four four five percent (3.445%) for a period of six months as noted in the Amendment.

In 2006 TSAC released an RFP for the provision of obtaining up to two parties to purchase loans from TSAC through its Loan Rehabilitation Program; a service which allows borrowers with defaulted Federal Stafford (subsidized and unsubsidized) Loans, Federal PLUS (parent and graduate/professional) Loans, and Federal Consolidation Loans to remove the default status on their loans and repair their credit. The loans would be offered at a premium that would be the product of the applicable percentage applied to the value of the rehabilitated loan. Prior to this, TSAC has offered the loans at par value since 1992. TSAC received two responses to the request: EdSouth and SouthTrust Bank. The respective contracts were effective October 2007. The percentage of loans offered to each Procuring Party would be determined by performance statistics based on performance criteria as outlined in the Contract.

On April 1, SunTrust Bank notified TSAC that effective March 28, 2008, they would no longer purchase rehabilitated loans due to the economic impact to SunTrust created by using a third party servicer, changes in applicable federal laws and regulations, and the recent decline of the credit markets (ATTACHMENT A).

EdSouth is now responsible for purchasing all rehabilitated loans. Unfortunately, due to the same liquidity crisis in the financial markets that affect SunTrust, EdSouth has also been impacted and asks that TSAC allow it to purchase their loans at a lower premium percentage for the next six months in hopes the market will stabilize during that time (ATTACHMENT B).

Due to the notice provided by SunTrust, and TSAC's desire to aid EdSouth during this financially volatile time in its endeavor to assist TSAC and the rehab borrowers by keeping the rehab process in place and to ensure a continued mutually profitable business enterprise we respectfully submit this request.

March 21, 2008

Mr. Levis Hughes
Associate Executive Director for Loan Administration
Tennessee Student Assistance Corporation
404 James Robertson Parkway
Suite 1950
Nashville, TN 37243-0820

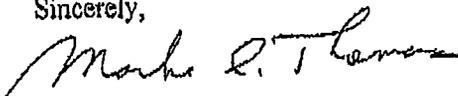
Dear Levis,

Under the terms of your contract with SunTrust Bank ("SunTrust"), this letter is formal notice to you that SunTrust Bank is terminating Contract RV-08-22767-00 (the "Contract"). We executed this Contract in response to the Request For Proposal #332-05-107 (the RFP). Because SunTrust and TSAC have not started the purchase process and SunTrust does not plan to purchase any rehabilitation loans, the termination effective date is March 24, 2008.

As you know, when SunTrust executed the Contract, SunTrust fully intended our Tennessee Servicing Center to service these loans. In October 2007, SunTrust subsequently decided to close the Tennessee Servicing Center. The economic impact to SunTrust created by (1) using a third party servicer, (2) changes in applicable federal laws and regulations, and (3) the recent decline of the credit markets, has resulted in SunTrust's inability to purchase these loans at a premium. Moreover, SunTrust and TSAC were not able to mutually agree on the delivery mechanism for these loans.

As always, please let us know if you have any questions. We sincerely appreciate the relationship SunTrust has with TSAC and hope we have the opportunity to continue to partner with you in other ways.

Sincerely,



Marke A. Thomas
Senior Vice President



ATTACHMENT B

Educational Funding of the South, Inc.

March 31, 2008

Mr. Levis Hughes
Associate Executive Director
Tennessee Student Assistance Corporation
Suite 1510, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243-0820

Dear Levis:

Educational Funding of the South (Edsouth) has been assisting the Tennessee Student Assistance Corporation (TSAC) with the purchase of rehabilitation loans for several years. In 2007, TSAC sent an RFP notice for the purpose of receiving responses bidding a premium for the rehab loans. There were two responders selected, Edsouth and SunTrust. Since SunTrust was not able to process at the November 2007 contract beginning, Edsouth continued to process the rehab loans and pay a premium. The rehab loan purchases were to be alternated monthly between Edsouth and SunTrust. Based on that presumption, Edsouth allocated bonds for the rehab purchases on six (6) months annual volume. As announced at the TSAC Board of Directors meeting on March 20, 2008, SunTrust notified TSAC that it would not be able to fulfill its contract. TSAC requested that Edsouth purchase all rehab loans as there were no other responders to the RFP.

Since January 2008 there has developed a liquidity crisis in the financial markets, especially as it relates to asset backed securities (bonds) used to purchase loans. Due to the significant increase in the cost of bonds and the decline in revenue provided on student loans, many lenders have exited the Federal Family Education Loan Program. Edsouth's liquidity has been significantly affected by this and the current value of student loans in the asset-backed bond market has dropped to 98 cents on the dollar based on rating agency calculations.

Therefore, in light of these events, Edsouth is requesting a six-month waiver on the current premium in the contract and offers to pay a 1% premium on the rehab loans. We are requesting that the waiver become effective April 1, 2008, as SunTrust has not purchased any rehab loans this year, and Edsouth has been asked to assist TSAC and the rehab borrowers to keep the rehab process in place. These premiums and purchases are dependent on our capacity with our existing bond indentures which at this time are performing very well; however, we must make this offer contingent on the rating agencies continuing to allow us to utilize the recycling capacity in these bond indentures to fulfill this commitment. We should have at least thirty (30) days notice of any change in our status with the rating agencies to allow you to make any adjustments.

Mr. Levis Hughes
March 31, 2008
Page 2

It is hoped that the financial liquidity crisis will be corrected within the six-month period, and it is Edsouth's intention to return to the contracted premiums as soon as the rating agencies reset the value of student loans that Edsouth purchases.

Edsouth regrets the short notice of this request, but the notice of SunTrust cancelling its contract was not anticipated in Edsouth financial planning in these very difficult times.

Edsouth has been a continual supporting partner of TSAC since 1988, and we look forward to a continuing relationship in these very unusual times.

Please notify me as soon as possible if these terms are acceptable so that we can provide uninterrupted processing for your rehab borrowers.

It is realized that this may necessitate an amendment to the current contract. Edsouth will work with you in that process.

Thank you for your consideration to allow us to continue to serve your students.

Sincerely,



Ron Gambill
Chairman/CEO

RG:jl



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
NASHVILLE, TENNESSEE 37243

PHIL BREDESEN
GOVERNOR

M. D. GONTZ, JR.
COMMISSIONER

F&A EXECUTIVE DETERMINATION REQUEST

From: Office of Contracts Review
Date: April 14, 2008
Re: RFS# 332.05-038-08 (cy08-407)

The subject, non-competitive amendment request is attached and submitted for executive determination.

The text written in support of the non-competitive procurement request does not appear to provide clear and compelling justification. Additionally, if the same revised terms and conditions had be offered to Sun Trust, the other competitively selected contractor (making the same "purchases" from the state), that contractor might have continued its contractual relationship. Notwithstanding the foregoing, this may represent a unique procurement situation about which executives may have more information.

If you elect to effect approval, please sign the request as appropriate on behalf of the F&A Commissioner.

Attachment

*Approved
4/14/08
B2*



Secretary of State Business Information Search

[Secretary of State Web Site](#) [Instructions](#)

Name	I.D. Number
EDUCATIONAL FUNDING OF THE SOUTH, INC.	0152052
Business Type*:	CORPORATION
Profit/Nonprofit:	
Status*:	ACTIVE
Date of Formation/Qualification:	02/20/1985
Domestic/Foreign:	DOMESTIC
Place of Incorporation/Organization:	KNOX
Duration:	PERPETUAL
FYC(Fiscal Year Closing) Month:	DECEMBER
Principal Office:	
Address Line 1:	104 NORTH SEVEN OAKS
Address Line 2:	DRIVE
City:	KNOXVILLE
State:	TN
Zip:	379220000
Other than USA:	
Registered Agent:	
Name:	JOHN E ARNOLD JR
Address Line 1:	104 N SEVEN OAKS DR
Address Line 2:	
City:	KNOXVILLE
State:	TN
Zip:	379220000
<u>Business Filing History</u>	
<p>* Important Note: Business filing History includes information about (1) the basis for an inactive status and (2) the current true name and filing status of a business with an assumed name or a changed status.</p> <p style="text-align: center;">Note: This information is current as of three working days prior to today's date.</p>	
<input type="button" value="Search Again"/>	
Report a Technical Issue	



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE STUDENT ASSISTANCE CORPORATION
AND
EDUCATIONAL FUNDING OF THE SOUTH, INC.**

This Contract, by and between the State of Tennessee, Tennessee Student Assistance Corporation, hereinafter referred to as the "State" or "TSAC" and Educational Funding of the South, Inc., hereinafter referred to as the "Procuring Party," is for the provision of obtaining up to two parties to purchase loans from TSAC through its Loan Rehabilitation Program. Loan Rehabilitation is a service which allows borrowers with defaulted Federal Stafford (subsidized and unsubsidized) Loans, Federal PLUS (parent and graduate/professional) Loans, and Federal Consolidation Loans to remove the default status on their loans and repair their credit history if nine (9) consecutive, on-time, voluntary monthly payments have been made within a ten (10) month period, as further defined in the "SCOPE OF SERVICES."

The Procuring Party is a private, nonprofit corporation.

The Procuring Party's address is 501 Corporate Centre Drive, Suite 320, Franklin, TN, 37067

The Procuring Party's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

- A.1. TSAC, through its contracted servicer, shall have the capability of processing rehabilitated defaulted FFELP loans, including and without limitation, Federal Stafford (subsidized and unsubsidized) Loans, Federal PLUS (parent and graduate/professional) Loans, and Federal Consolidation Loans.
- A.2. TSAC, through its contracted servicer, shall ensure that the formats, programs, procedures, and documentation for the Loan Rehabilitation Program meets TSAC, and the U.S. Department of Education regulatory and statutory requirements, and complies with all applicable statutes, regulations, directives, and initiatives for the Federal Family Education Loan Program.
- A.3. TSAC shall make no guarantee as to the volume of rehabilitated loans to be purchased by the Procuring Party under this Contract.
- A.4. TSAC, through its contracted servicer, shall begin offering the Procuring Party loans which meet the Loan Rehabilitation Program requirements on an alternating monthly schedule for one year. Based on the performance data received during the first year, TSAC will establish a monthly performance percentage of either 50/50, 60/40, or 70/30 based upon the following objective formula:

If the competing Procuring Parties' performance statistics are evenly scored on the following three performance criteria, the monthly placement percentage will be 50/50. Should one Procuring Party score higher than the other Procuring Party on the bulleted items by a net score of one, the monthly placement percentage will be 60/40 in favor of the Procuring Party with the higher score. Should one Procuring Party

score higher than the other Procuring Party on the bulleted items by a net score of two or more, the monthly placement percentage will be 70/30 in favor of the Procuring Party with the higher score.

The scores shall be objectively calculated using the following measures of each of the three performance criteria:

- The number, dollar value, and percentage of loans which are greater than 60 days delinquent;
- The number, dollar value, and percentage of loans which re-default for non-payment;
- The number, dollar value, and percentage of loans which were cured and the types of cures effected to cure the account.

"Cure" refers to the method in which an account is brought current (i.e. payments).

- A.5. TSAC, through its contracted servicer, shall identify those borrowers who meet the Loan Rehabilitation Program requirements and validate their eligibility based on TSAC and the U.S. Department of Education regulatory and statutory requirements, and comply with all applicable statutes, regulations, directives, and initiatives for the Federal Family Education Loan Program.
- A.6. TSAC, through its contracted servicer, shall provide the estimated number and dollar volume of loans to be rehabilitated up to five (5) business days before the effective date of the purchase transaction to the Procuring Party in a mutually agreed upon format (i.e., e-mail or other electronic process).
- A.7. TSAC, through its contracted servicer, shall provide the actual number and dollar volume of loans to be rehabilitated up to three (3) business days before the effective date of the purchase transaction to the Procuring Party in a mutually agreed upon format (i.e., email or other electronic process).
- A.8. TSAC, through its contracted servicer, shall provide a report of all loans that are eligible for rehabilitation in each rehabilitation cycle to the Procuring Party in a mutually agreed upon (either manual or electronic) format. The report shall include, at a minimum:
- Borrower Social Security Number,
 - Borrower Full Name,
 - Borrower Address,
 - Borrower Phone Number,
 - Borrower DOB,
 - Student Social Security Number, if PLUS loan,
 - Student Full Name, if a PLUS loan,
 - Student Address, if a PLUS loan,
 - Student Phone Number, if a PLUS loan,
 - Student DOB, if a PLUS loan,
 - Loan Type,
 - Guarantor ID,
 - Guarantee Date,
 - Guarantee Amount,
 - Interest Rate,
 - Principal Outstanding,
 - Collection Costs,
 - Total Loan Balance,
 - Next Due Date,
 - Effective Purchase Date, and
 - Number and Dollar volume of loans to be rehabilitated.

- A.9. TSAC, through its contracted servicer, shall forward the loan file and collateral (i.e., Master Promissory Note) for each borrower rehabilitated to the Procuring Party within thirty (30) business days from the effective date of the purchase transaction. If the loan file and/or collateral are missing, TSAC, through its contracted servicer, shall forward a Memorandum of Understanding which states that TSAC will repurchase a loan if the Procuring Party is unable to collect on the loan due to the missing loan file and/or collateral.
- A.10. TSAC, through its contracted servicer, shall forward the report, as described in A.8., to the Procuring Party with the loan files and collateral included in that rehabilitation cycle.
- A.11. TSAC, through its contracted servicer, shall report to the national credit bureaus within a timeframe specified by TSAC and the U.S. Department of Education statutory and regulatory requirements.
- A.12. The Procuring Party shall have the capability of processing rehabilitated defaulted FFELP loans, including and without limitation, Federal Stafford (subsidized and unsubsidized) Loans, Federal PLUS (parent and graduate/professional) Loans, and Federal Consolidation Loans.
- A.13. The Procuring Party shall ensure that the formats, programs, procedures, and documentation for the Loan Rehabilitation Program meets TSAC, and the U.S. Department of Education regulatory and statutory requirements, and complies with all applicable statutes, regulations, directives, and initiatives for the Federal Family Education Loan Program.
- A.14. The Procuring Party shall be capable of meeting and exceeding the requirements stated in this Scope of Services.
- A.15. The Procuring Party shall purchase all eligible rehabilitated loans regardless of the original lender.
- A.16. The premiums paid by the Procuring Party shall not be added to the borrower's loan balance.
- A.17. The Procuring Party shall ensure that the rehabilitated loans purchased through TSAC's Loan Rehabilitation Program are loaded to their system within forty-five (45) business days from the effective date of the purchase transaction.
- A.18. The Procuring Party shall establish a repayment schedule with rehabilitated borrowers that meets TSAC, and the U.S. Department of Education statutory and regulatory requirements on Loan Rehabilitation, and complies with all applicable statutes, regulations, directives, and initiatives for the Federal Family Education Loan Program.
- A.19. The Procuring Party shall provide to TSAC a monthly report that reflects the performance of the rehabilitated loan portfolio regarding delinquency, loans cured, and re-default in a mutually agreed upon (either manual or electronic) format. The report shall include, at a minimum:
- Borrower Social Security Number,
 - Borrower Full Name,
 - Loan Type,
 - Guarantee Date,
 - Rehabilitation Date,
 - Total Loan Balance,
 - Next Due Date,
 - Number of days delinquent,
 - Cure Date,
 - Cure Type,
 - Re-default Date, and
 - Default Type.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on October 1, 2007 and ending on September 30, 2012.

C. PAYMENT TERMS AND CONDITIONS:

The Procuring Party's remittance for each rehabilitated loan shall consist of separate ACH payments on the scheduled effective date of the purchase. The first payment will represent the value of the rehabilitated loan. This value shall be the total of the full principal balance outstanding, accrued interest, and any other permissible costs, as defined in Title IV of the Higher Education Act of 1965, as amended, that are payable by the borrower.

The second ACH payment will consist of the premium. The premium shall be the product of the pertinent percentage (see table below) applied to the value of the rehabilitated loan (above).

Percentage Premium per Rehabilitated Loan Amount (rounded to three decimal places - 000)				
Year 1	Year 2	Year 3	Year 4	Year 5
10/01/07 - 09/30/08	10/01/08 - 09/30/09	10/01/09 - 09/30/10	10/01/10 - 09/30/11	10/01/11 - 09/30/12
3.445	3.445	3.445	3.445	3.445

For any federal legislative mandates which affect rehabilitation loan yields, the resulting percentage of change in loan yields shall be applied to the existing premium percentage to determine the new Premium for Rehabilitated Loans.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract or any amendment thereof 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 Contract may be terminated by either party by giving written notice to the other, at least ninety (90) days before the effective date of termination. Said termination shall not be deemed a Breach of Contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.

Upon such termination, the Procuring Party 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 Procuring Party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the State shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. The Procuring Party 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, 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).
- D.6. Conflicts of Interest. The Procuring Party warrants that no 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 Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by Section A of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure 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 State or the Procuring Party 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.
- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. 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 agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision.
- D.10. 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.

Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*

- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.12. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.13. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party 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 Procuring Party 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.14. 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.15. 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.16. Headings. Section headings 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 facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Levis Hughes, Associate Executive Director of Loan Administration
Tennessee Student Assistance Corporation
404 James Robertson Parkway, Suite 1510, Nashville, TN, 37243-0820
Levis.Hughes@state.tn.us
Telephone # 615-741-3000 x126
FAX # 615-741-6101

The Procuring Party:

Ron Gambill
Educational Funding of the South, Inc.
501 Corporate Centre Drive, Suite 320, Franklin, TN, 37067
rgambill@edsouth.org
Telephone # 615-771-8505
FAX # 615-771-8276

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received

mechanically by the fax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Procuring Party's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Procuring Party
- e. The Procuring Party's Proposal

In the event of a discrepancy or ambiguity regarding the Procuring Party's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.4. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Procuring Party will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Procuring Party exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Procuring Party's obligations under this section do not apply to information in the public domain; entering the public domain but not from a Breach by the Procuring Party of this Contract; previously possessed by the Procuring Party without written obligations to the State to protect it; acquired by the Procuring Party without written restrictions against disclosure from a third party which, to the Procuring Party's knowledge, is free to disclose the information; independently developed by the Procuring Party without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.5. Prohibited Advertising. The Procuring Party shall not refer to this Contract or the Procuring Party's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Procuring Party or the Procuring Party's services are endorsed.

E.6. Non-Competition. Neither the Procuring Party, nor any affiliate of the Procuring Party, nor any contractual or ownership interests in or with the Procuring Party shall actively market against TSAC for loan guarantees within the State of Tennessee. An annual report displaying the Procuring Party's level of student loan business by school within the State of Tennessee shall be provided to TSAC. A change of ownership or a change in ownership interests shall be reported to TSAC when the change occurs or at least yearly, whichever occurs first.

E.7. Active Participation. The Procuring Party will provide a statement that it has an active participation agreement with TSAC and is currently paying the Federal Default Fee on behalf of student borrowers and parent borrowers.

IN WITNESS WHEREOF:

EDUCATIONAL FUNDING OF THE SOUTH:

Ron Gambill
RON GAMBILL, CHAIRMAN/CEO

9-25-07
DATE

TENNESSEE STUDENT ASSISTANCE CORPORATION:

Robert Ruble
ROBERT RUBLE, EXECUTIVE DIRECTOR

9-27-07
DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr.
M. D. GOETZ, JR., COMMISSIONER

11/5/07
DATE

DEPARTMENT OF PERSONNEL:

N/A
DEBORAH E. STORY, COMMISSIONER

DATE

COMPTROLLER OF THE TREASURY:

John G. Morgan
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

11/10/07
DATE