

CONTRACT #20
RFS # 331.03-01013
FA # 12-1752
Edison # 35054

Education

VENDOR:
Harris, Mackessy &
Brennan, Inc.



BILL HASLAM
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

KEVIN HUFFMAN
COMMISSIONER

SUBMITTED VIA ELECTRONIC MAIL

TO: Lucien Guise, Fiscal Review Committee

FROM: Kevin Huffman, Commissioner ^{KH}

DATE: January 4, 2013

RE: Request to appear before the fiscal review committee regarding non-competitive contract for agency tracking # 33103-01013

Please consider the enclosed request for non-competitive contract with Harris, Mackessy, and Brennan, Inc. (HMB). The contract will provide services for the customization of HMB's electronic grants management system that was gifted to the Tennessee Department of Education (TNDOE) to plan, administer, and oversee federal grants. This contract will allow for the following:

- Electronic planning tool for districts to plan and efficiently use multiple grant funds
- Automation of the federal grant application process
- Consistency among federal grant applications
- Efficiency in the grant review and approval process - expediting approvals by implementing system validations to prevent the submission of invalid applications
- Increased transparency in local education agency (LEA) progress on grant applications to allow the TNDOE to provide necessary technical assistance
- Automation of fiscal processes by generating error-free fund requests and final expenditure reports – eliminating duplication of processes
- Reduction of LEA and TNDOE time needed for grant administrative tasks - increasing time available for student achievement activities

Tennessee receives over five-hundred-million in federal grant funds each year to serve LEAs. Currently, the annual LEA budget and application procedures for federal grants are processed via an Excel spreadsheet and Word documents. This is not an efficient process and has produced issues identifying corrected data, files being too large to send in a single email, software compatibility, and not being able to identify history (such as who submitted the information, comments, etc.).

I apologize that this request does not meet the sixty-day deadline for submission. TNDOE leadership made additional changes to the scope and implementation schedule in order to provide a more comprehensive package to LEAs including the planning tool and funding application. These changes delayed our submission due to the inclusion of multiple divisions within TNDOE (No Child Left Behind, special education, career and technical education). We also wanted to ensure a fit between the online grants management system and the larger IT plan for TNDOE. Due to the cyclical federal grant application processes, missing this window would result in a full year delay in the implementation of the electronic grants management system. Finally, we wanted to allow the vendor ample time to customize to Tennessee specifications and to test the system for both the planning and application tools.

Thank you for your consideration.

**Supplemental Documentation Required for
Fiscal Review Committee**

*Contact Name:	Eve Carney	*Contact Phone:	615-532-1245		
*Original Contract Number:	33103-01013	*Original RFS Number:	33103-01013		
Edison Contract Number: <i>(if applicable)</i>	35054	Edison RFS Number: <i>(if applicable)</i>	N/A		
*Original Contract Begin Date:	February 15, 2013	*Current End Date:	February 14, 2016		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Education				
*Division:	Data and Communications -- Federal Programs				
*Date Submitted:	January 7, 2013				
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	TNDOE leadership made additional changes to the scope and implementation schedule in order to provide a more comprehensive package to the local education agencies (the planning tool and funding application) which required contracts revisions.				
*Contract Vendor Name:	Harris, Mackessy & Brennan, Inc.				
*Current Maximum Liability:	\$874,000.00				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2013	FY: 2014	FY: 2015	FY:	FY	FY
\$ 400,000	\$ 300,000	\$174,000	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2013	FY: 2014	FY: 2015	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A			
*Contract Funding Source/Amount:	State:		Federal:	\$875,000	

Supplemental Documentation Required for
Fiscal Review Committee

Interdepartmental:	<i>Other:</i>
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>
N/A	
Method of Original Award: <i>(if applicable)</i>	Non-Competitive
*What were the projected costs of the service for the entire term of the contract prior to contract award?	\$874,000.00

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: 2013	FY: 2014	FY: 2015	FY:	FY:
ESEA Consolidated Application set-up; A.4.a.	\$70,000.00	\$0.00	\$0.00		
Planning Tool set-up; A.4.a.	\$30,000.00	\$0.00	\$0.00		
Title III Immigrant Application set-up; A.5.a.(1)	\$0.00	\$12,000.00	\$0.00		
Title X Application set-up; A.5.a.(2)	\$0.00	\$12,000.00	\$0.00		
Discretionary Grant Application set-up; A.5.a.(3)	\$0.00	\$12,000.00	\$0.00		
School Improvement Grant application set-up; A.5.a.(4)	\$0.00	\$12,000.00	\$0.00		
IDEA Application set-up; A.5.a.(5)	\$20,000.00	\$0.00	\$0.00		
CTE Application set-up; A.5.a.(6)	\$0.00	\$47,000.00	\$0.00		
Document Library creation; A.7.b.(3)	\$20,000.00	\$0.00	\$0.00		
ESEA Consolidated Application page enhancements; A.7.b.(6)	\$15,000.00	\$5,000.00	\$5,000.00		
Title III Application page enhancements; A.7.b.(6)	\$0.00	\$5,000.00	\$5,000.00		
Title X Application page enhancements; A.7.b.(6)	\$0.00	\$5,000.00	\$0.00		
Discretionary	\$0.00	\$5,000.00	\$0.00		

**Supplemental Documentation Required for
Fiscal Review Committee**

Grant Application page enhancements; A.7.b.(6)					
School Improvement Application page enhancements; A.7.b.(6)	\$0.00	\$5,000.00	\$5,000.00		
IDEA Application page enhancements; A.7.b.(6)	\$15,000.00	\$10,000.00	\$5,000.00		
CTE Application page enhancements; A.7.b.(6)	\$0.00	\$5,000.00	\$5,000.00		
Planning Tool enhancements; A.7.b.(6)	\$20,000.00	\$5,000.00	\$5,000.00		
Interface with Organization System of Record; A.7.b.(7)	\$10,000.00	\$0.00	\$0.00		
Edison interface and payment /budget codes; A.7.a.(2) & A.7.b.(8)	\$40,000.00	\$0.00	\$0.00		
SEA training material creation; A.7.c.(1)	\$12,000.00	\$12,000.00	\$12,000.00		
On-site training sessions for SEA and LEA; A.7.c.(2-3)	\$40,000.00	\$40,000.00	\$24,000.00		
Production, support, maintenance, and hosting; A.7.d.(1-3)	\$108,000.00	\$108,000.00	\$108,000.00		
TOTAL:	\$400,000.00	\$300,000.00	\$174,000.00		
<p>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.</p> <p>Cost savings was determined by the difference in the price of HMB's system and MTW Solutions' system.</p>					

**Supplemental Documentation Required for
Fiscal Review Committee**

Deliverable description:	FY: 2013	FY: 2014	FY: 2015	FY:	FY:
Electronic Grants Management System Platform and source code	\$900,000.00	\$1,000,000.00	\$1,125,000.00		
<p align="center">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.</p> <p>MTW Solutions' system was researched and it was found that and it did not fit our needs as closely as HMBs product. Additionally their system cannot be gifted to other states as HMB's can.</p>					
Proposed Vendor Cost: MTW Solutions	FY: 2013	FY: 2014	FY: 2015	FY:	FY:
Annual cost for system	\$700,000.00	\$700,000.00	\$70,000.00		
Per month cost for 3.5 full time employees to provide technical assistance and maintenance of system changes.	\$600,000.00	\$600,000.00	\$600,000.00		
TOTAL:	\$1,300,000.00	\$1,300,000.00	\$1,300,000.00		



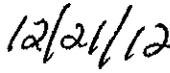
HR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Brigitte Tubbs-Jones, HR Special Counsel
Department of Human Resources
E-mail : Brigitte.Tubbs-Jones@tn.gov

FROM : Kristen McKeever, Director of Contracts
E-mail : Kristen.McKeever@tn.gov

DATE : December 13, 2012

RE : Request for Human Resources Pre-Approval Endorsement

Applicable RFS #	33103-01013
Human Resources Endorsement Signature & Date:	
	
	
Department of Human Resources	

Department of Human Resources (HR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements involving services relating to the employment of current or prospective state employees (interviewing, screening, evaluating, *et cetera*) or training state employees. This request seeks to ensure that HR is aware of and has an opportunity to review the procurement detailed below and in the attached document(s).

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

Contracting Agency	Education
Agency Contact (<i>name, phone, e-mail</i>)	Kristen McKeever, 532-8539, Kristen.McKeever@tn.gov
Required Attachments (<i>as applicable – copies without signatures acceptable</i>)	
<input type="checkbox"/> RFP <input type="checkbox"/> Competitive Negotiation Request <input type="checkbox"/> Alternative Procurement Method Request <input checked="" type="checkbox"/> Non-Competitive Contract/Amendment Request	
Service Description	
A.7.c.(2) On-site Training: The Contractor shall train State staff during a one, two-day training session staffed with two Contractor personnel on-site. The Contractor shall provide materials and manuals to State staff.	



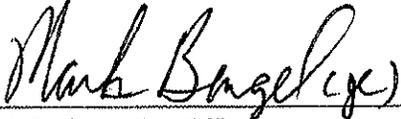
OIR Pre-Approval Endorsement Request E-Mail Transmittal

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

FROM : Kristen McKeever, Director of Contracts
E-mail : Kristen.McKeever@tn.gov

DATE : December 14, 2012

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 33103-01013
OIR Endorsement Signature & Date:
 1/2/13
Chief Information Officer <small>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</small>

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.

Contracting Agency	Education
Agency Contact (name, phone, e-mail)	Kristen McKeever, 532-8539, Kristen.McKeever@tn.gov
Subject Procurement Document (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input checked="" type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	
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 (name):	Renee Koch, Executive Director, Product Portfolio Management

Applicable RFS # 33103-01013
Required Attachments (as applicable – copies without signatures acceptable) <input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request <input type="checkbox"/> Original Contract/Grant or Amendment <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment
Subject Information Technology Service Description (Brief summary of Information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.) Implementation, customization and support of a gifted online grants management system.

CONTRACT PROVISION REQUEST

TENNESSEE DEPARTMENT OF EDUCATION – CONTRACTS OFFICE

***Attach Proposed Contract**

Requested By: Eve Carney	Request Date: January 4, 2013	RFS Number: 33103-01013
Program Area: Federal Programs	Start Date: March 11, 2013	End Date: March 10, 2016 (with an option to extend for 2 additional years)
Vendor Name: Harris, Mackessy & Brennan, Inc.		Contract Amount: \$874,000.00

Contract Provision(s) E Clauses to be Included:

- | | | |
|--|--|---|
| <input type="checkbox"/> State Ownership of Work Products | <input type="checkbox"/> Copyrights and Patents | <input type="checkbox"/> Partial Takeover |
| <input type="checkbox"/> Ownership of Software & Work Products | <input checked="" type="checkbox"/> Hold Harmless | <input type="checkbox"/> Unencumbered Personnel |
| <input type="checkbox"/> Performance Bond | <input type="checkbox"/> Breach (Liquidated Damages) | |
| <input type="checkbox"/> Other: | | |

Contract Provision(s) E Clauses to be Excluded:

- | | |
|--|---------------------------------|
| <input type="checkbox"/> State Interest in Equipment | <input type="checkbox"/> Other: |
|--|---------------------------------|

Justification for why the provision(s) requested are in the best interest of the State and the Department of Education. Identify the risk(s).

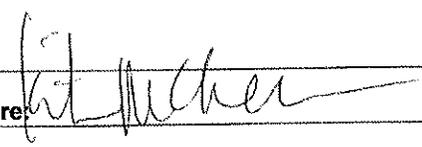
Purpose of Contract:

Modifications and enhancements the State's electronic Grants Management System

Legal Counsel Review and Approval:

<input checked="" type="checkbox"/> Concur with Request	<input type="checkbox"/> Do Not Concur	Signature: 
Comments:		

Contracts Office Review and Approval:

<input checked="" type="checkbox"/> Concur with Request	<input type="checkbox"/> Do Not Concur	Signature: 
Comments:		

Non-Competitive Contract Request

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

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprsr.Agsprsr@state.tn.us

APPROVED

CENTRAL PROCUREMENT OFFICER

Request Tracking #	33103-01013	
1. Contracting Agency	Education (TDOE)	
2. Proposed Contractor	Harris, Mackessy, and Brennan, Inc. (HMB, Inc.)	
3. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months (initially 36 months with an option to extend)	
4. Maximum Contract Cost – with ALL options to extend exercised	\$875,000.00	
5. Office for Information Resources Endorsement – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
6. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
7. Human Resources Support – state employee training	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
8. Has the contracting agency bought the subject service before?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input type="checkbox"/> Non-Competitive Negotiation	
9. Service Description – brief <u>summary</u> only – do NOT restate the proposed scope of service	<p>Implementation, customization and support of a gifted online grants management system (eGrants) to be used for federal grant funding for 142 local education agencies (LEAs) and TDOE. This includes application process, grant monitoring, and reimbursement to LEAs.</p>	
10. Explanation of Need for or Requirement Placed on the State to Acquire the Service	<p>Tennessee receives over five-hundred-million in federal grant funds each year to serve LEAs. Currently the LEA budget and application process are managed in an excel spreadsheet and word documents and submitted via email. This is not an efficient process and has produced issues identifying corrected data, files being too large to send in a single email, software compatibility, and not being able to identify history (such as who submitted the information, comments, etc.). A uniform system is needed to streamline TDOE and LEA grants management application and monitoring processes.</p>	
11. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution		

Request Tracking #	33103-01013
<p>HMB, Inc. 570 Polaris Parkway, Suite 125 Westerville, Ohio 43082</p>	
<p>12. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>The Contractor has over ten years' experience in providing their eGrants system to other states. We have conducted both conference calls and meetings with other states to evaluate the service and use of HMB's platform and found a high level of satisfaction.</p>	
<p>13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>TDOE stakeholders met with another vendor to determine which product met the needs of the state and would be most cost effective. It was determined that the HMB eGrants product was most aligned with Tennessee's needs and would require less customization.</p>	
<p>14. Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>Tennessee is one of the only states not currently using an online grants management tool. This tool allows LEAs to complete the application for funding; submit budgets and revisions; and generate reimbursement requests online. Such a system reduces the burden on LEAs while allowing the state to manage and review sub-grantees more effectively. We convened a stakeholder group consisting of representatives from the Office of Federal Programs, Special Education, Career Technical Education, and state fiscal consultants to review various products for online grants management. HMB's eGrants system has been gifted to Tennessee by the state of Ohio. It is in the best interest of the state to contract with HMB for the implementation, customization and support of the eGrants system for two reasons: their product fits our needs best and the system itself has been gifted to Tennessee, and we are responsible only for customization and support – resulting in substantial savings for the state.</p>	
<p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p> 12/14/12</p>	



CONTRACT

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

Begin Date February 15, 2013	End Date February 14, 2016	Agency Tracking # 33103-01013	Edison Record ID 35054
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Contractor Legal Entity Name Harris, Mackessy & Brennan, Inc.	Edison Vendor ID 0000000431
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Service Caption (one line only)
Modifications and enhancements the State's electronic Grants Management System

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # Various
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Funding --					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$0.00	\$400,000.00	\$0.00	\$0.00	\$400,000.00
2014	\$0.00	\$300,000.00	\$0.00	\$0.00	\$300,000.00
2015	\$0.00	\$174,000.00	\$0.00	\$0.00	\$174,000.00
TOTAL:	\$0.00	\$874,000.00	\$0.00	\$0.00	\$874,000.00

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)

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

Speed Chart (optional) Various	Account Code (optional) Various
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
HARRIS, MACKESSY & BRENNAN, INC.**

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the 'State' and Harris, Mackessy & Brennan, Inc., hereinafter referred to as the "Contractor," is for the provision of modifications and enhancements to the State's electronic Grants Management System, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Ohio
Contractor Edison Registration ID # 0000000431

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Definitions:
- a. Discretionary grants- federal grants that are awarded competitively to eligible districts. These grant awards are not based on funding formulas used for traditional formula grants but are based on highest need and strongest commitment to implement. These grants often require more stringent oversight than traditional formula grants.
 - b. Elementary and Secondary Education Act (ESEA) - federal law that funds programs for economically disadvantaged students.
 - c. Grants Management System (GMS) – online planning and funding application tool.
 - d. Individuals with Disabilities Act (IDEA) – federal law that funds programs for special needs students.
 - e. Local Education Agency (LEA) – school district, special school, or Achievement School District (ASD).
 - f. Edison- accounting system of State of Tennessee responsible for reimbursements to LEAs.
 - g. Organization System of Record (OSR)- internal data system that stores LEA information.
 - h. School Improvement Grants - Competitive grants to districts with low-performing schools as identified by the state's accountability system
 - i. Title III Immigrant- based on growth of immigrant population, this competitive grant is awarded annually to an average of 3-4 districts to address the needs of the population. This grant is in addition to the Title III formula grant that each district receives for the Non-English Language Background (NELB) students.
- A.3. The Contractor shall provide modifications and enhancements to the State's electronic GMS for the planning tool, funding application, oversight, payment, and implementation of federal grant funds to be implemented in two phases.
- A.4. Phase I shall be implemented in the 2013-2014 school year.
- a. The Contractor shall install and modify the planning tool for ESEA and IDEA.
 - b. The Contractor shall install and modify the ESEA Consolidated Application: Title I, Title I-D, Title II- A, Title III, Title VI, and Consolidated Administration.
 - c. The Contractor shall install and modify the Individuals with Disabilities Act (IDEA): Part B and Pre-school
- A.5. Phase II shall be implemented in the 2014-2015 school year.

- a. The Contractor shall install and modify the following funding applications:
 - (1) Title III – Immigrant
 - (2) Title X – McKinney Vento
 - (3) Discretionary Grants
 - (4) School Improvement Grants
 - (5) Career Technical Education (CTE)

- A.6. For use in the planning tool and funding applications, the Contractor shall provide software licenses Keyoti RapidSpell and ABCpdf, third-party tools used by GMS to offer spell-checking and printer-friendly, PDF capabilities within the application.

- A.7. The Contractor shall provide the following for Phase I and Phase II of the implementation process for each funding application:
 - a. Application setup shall include the following:
 - (1) Configuration: The Contractor shall configure an electronic funding application for each listed funding application that meets State specifications to include workflow steps, sections, pages, assurances and checklist items.
 - (2) Budget: Each funding application shall also include budget function codes, budget object codes, program details, related document types, and validations, and other program-specific details as directed by the State.
 - (3) Term Conversion: The Contractor shall modify the names of GMS data entities to reflect names that are meaningful to State. This includes but is not limited to the names of the web application, the State, budget object code, budget purpose code, cash request, final expenditure report, private school, LEA fiscal representative, and LEA authorized representative.

 - b. Application enhancements shall include the following source code updates and database structure modifications as needed:
 - (1) Payment: The Contractor shall modify the GMS to import a payment verification file from Edison and move State-approved payment requests into a 'Released for Payment' status. The Contractor shall modify the GMS to display a status of 'Submitted to Edison for Payment' until Edison provides an email confirmation of payment.
 - (2) Narrative: The Contractor shall modify the GMS budget functionality to identify which Account Number/Line Item combinations require narrative entries from the LEAs.
 - (3) Library: The Contractor shall create an LEA Document Library outside of the funding application process. Per State specifications, the Contractor shall create folders and types of documents to be uploaded by the LEAs through an administrative tool. After a document type is identified, the State would be able to specify the LEAs that are required to upload that particular document type. The Contractor shall create an additional search documents page that allows State users to search on a particular document type and view results for all LEAs on one screen.
 - (4) Contact Information: The Contractor shall modify the funding application contacts page to capture additional LEA contact types as directed by the State through an administrative tool. The Contractor shall also modify the GMS to list the new contact types in the LEA Address Book so users can view all contacts in one place.

- (5) Verification/Confirmation affirmation: The Contractor shall modify the funding application and fund request workflow confirmation screens to include checkbox verifications that must be checked by the user in order to proceed.
 - (6) Page-specific Modifications: Per State specifications, the Contractor shall modify existing pages and processes to accommodate State categories or specifications. This includes, but is not limited to program pages, set-asides, private school services, fund requests, building eligibility pages, expenditure validation, and final expenditure reports.
 - (7) Interface: The State shall establish a database that consolidates and houses all of the State organizational data known as the OSR. The State shall make the OSR data available to the GMS for importing. The Contractor shall import organizational data from the OSR nightly. The OSR data include, but is not limited to, organization types of LEA, public school, charter school, non-public school, state agency, and state special school.
 - (8) Flat File Modification: The Contractor shall modify the GMS to output a flat file of all State-approved payment requests that have not been submitted to Edison for payment. The flat file will be modified to include necessary State and Edison accounting codes in the GMS in order to identify the proper source of payment using an LEA-level first-in, first-out (FIFO) accounting methodology. The Contractor shall also modify the GMS to exclude other payments requests from the flat file requests from the configuration as directed by the State (i.e. State special schools and state agencies).
- c. User training shall include the following for State and LEA users:
- (1) Materials: The Contractor shall create PowerPoint slides and other training materials for presentation at State and LEA training. The Contractor shall produce training manuals for on-site training and/or uploaded to the Document Library.
 - (2) On-site Training: The Contractor shall train State staff during a one, two-day training session staffed with two Contractor personnel on-site. The Contractor shall provide materials and manuals to State staff.
 - (3) The Contractor shall provide two consultants for four, two-day regional LEA training sessions for LEAs at sites to be determined by the State. All LEA training materials shall be provided by Contractor.
- d. Support and hosting shall include the following:
- (1) Technical Support: The Contractor shall provide the following support for the State GMS:
 - i. Technical Support. The Contractor shall provide telephone, fax, and e-mail support on business days during the hours of 8:00 AM to 5:00 PM Eastern Time to assist in the configuration and use of the Software. In addition, the Contractor shall adjust hours around critical deadline dates of the application.
 - ii. Problem Resolution. The Contractor shall correct, within three business days (by providing workaround or correction in an upgrade), any reproducible software defects reported.
 - iii. New Fiscal Year Modifications. The Contractor shall make configuration updates to the Budget, Application Details, and Related Documents pages for existing grants in preparation for the new fiscal year at no additional cost.
 - iv. New Enhancements. The Contractor shall transfer new enhancements completed for other states using GMS that fit into the State solution at no additional cost.

- v. Business Expertise. The Contractor shall meet regularly with State staff to assist in preparing for current application processes, plan for future tasks, and discuss emerging trends in federal education grant policy.
- vi. Reports. The Contractor shall make available a State Reports Module built on Microsoft's SQL Server Reporting Service (SSRS) Framework. Included in this support service will be the creation of reports that can be generated by the Contractor using Transact-SQL programming constructs.
- vii. Ongoing Training. The Contractor shall be available to perform continuing training as requested by the State. Ongoing training will be done remotely using web conferencing.
- viii. Additional Work. The State may request, at its sole discretion, additional work involving the enhancement or modification of the GMS.

(2) Hosting is defined as the hosting of the GMS website, database, and supporting and related documents and files. The Contractor shall host the GMS as part of the support services, delivering all of the benefits of the Microsoft Windows Azure cloud platform, including 99.9 percent monthly availability and the capability to scale resources during high traffic. The Contractor hosted solution also includes access to a reporting server that integrates with the GMS reporting module. The Contractor shall also provide access to a test server which the State can use for LEA training and quality assurance testing. The Contractor hosted solution is included in the price of support.

(3) The Contractor shall maintain the application in accordance with the following:

- i. Internet Information Services (IIS) – The Contractor shall test and modify, if necessary, its GMS software to ensure compatibility with the most recent version of IIS within one year of a new IIS version being released.
- ii. .NET Framework – The Contractor shall test and modify, if necessary, its GMS software to ensure compatibility with the most recent version of the .NET Framework within one year of a new .NET Framework version being released.
- iii. SQL Server – The Contractor shall test and modify, if necessary, its GMS software to ensure compatibility with the most recent version of SQL Server within one year of a new SQL Server version being released.
- iv. Web Browsers – The Contractor shall test and modify, if necessary, its GMS software to ensure compatibility with the most recent versions of Internet Explorer, Firefox, Chrome, and Safari within one year of a new Web Browser version being released.

B. CONTRACT PERIOD:

- B.1. Contract Period. This Contract shall be effective for the period beginning February 15, 2013, and ending on February 14, 2016. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed eight hundred seventy-four thousand dollars and no cents (\$874,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and

Contractor 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)
ESEA Consolidated Application Set-up (A.4.a)	\$70,000.00/upon completion
Planning Tool Set-up (A.4.a)	\$30,000.00/upon completion
Title III Immigrant Application Set-up (A.5.a(1))	\$12,000.00/upon completion
Title X Application Set-up (A.5.a(2))	\$12,000.00/upon completion
Discretionary Grant Application Set-up (A.5.a(3))	\$12,000.00/upon completion
School Improvement Grant Application Set-up (A.5.a(4))	\$12,000.00/upon completion
IDEA Application Set-up (A.5.a(5))	\$20,000.00/upon completion
CTE Application Set-up (A.5.a(6))	\$47,000.00/upon completion
Document Library Creation – (A.7.b(3))	\$20,000.00/upon completion
ESEA Consolidated Application Page Enhancements - (A.7.b(6))	\$5,000.00/ per page/upon completion
Title III Immigrant Application Page Enhancements - (A.7.b(6))	\$5,000.00/ per page/upon completion
Title X Application Page Enhancements - (A.7.b(6))	\$5,000.00/ per page/upon completion
Discretionary Grants Application Page Enhancements - (A.7.b(6))	\$5,000.00/ per page/upon completion
School Improvement Grant Application Page Enhancements - (A.7.b(6))	\$5,000.00/ per page/upon completion
IDEA Application Page Enhancements - (A.7.b(6))	\$5,000.00/ per page/upon completion
CTE Application Page Enhancements - (A.7.b(6))	\$5,000.00/per page/upon completion
Planning Tool Enhancements – (A.7.b(6))	\$5,000.00/per page/upon completion

Interface with Organization System of Record (A.7.b(7))	\$10,000.00/upon completion
Edison interface and payment /budget codes modifications (A.7.a(2)); (A.7.b(8))	\$40,000.00/upon completion
SEA training materials– (A.7.c(1))	\$12,000.00/upon completion
On-site training sessions for SEA and LEA- (A.7.c(2-3))	\$8,000.00/per training
Production support, maintenance and hosting- (A.7.d(1-3))	\$108,000.00/per year

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

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 present said invoices no more often than monthly, with all necessary supporting documentation, to:

Eve Carney, Assoc. Executive Director
Office of Federal Programs
Tennessee Department of Education
710 James Robertson Parkway
Andrew Johnson Tower, 5th floor
Nashville, TN 37243

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: TDOE / Grants Management System
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (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
 - v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice 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) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and

- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- 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. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, 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).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- 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 thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to 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, each 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.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- 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 handicap or 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 A, 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.* 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:

Eve Carney, Executive Director
Office of Federal Programs
Tennessee Department of Education
710 James Robertson Parkway
Andrew Johnson Tower, 5th Floor
Nashville, TN 37243
Eve.Carney@tn.gov
Telephone # (615) 532-1245
FAX # (615)253-5706

The Contractor:

John Mamula
Harris, Mackessy, and Brennan, Inc.
570 Polaris Parkway, Suite 125
Westerville, Ohio 43082

jmm@hmbnet.com
 phone (614) 221-6831
 FAX # (614) 221-6856

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, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
 - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
 - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall

prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*

E.8. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.9. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
- E.10. Federal Economic Stimulus Funding. This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).
- d. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - (2) Section 1512 – Reporting and Registration Requirements. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
 - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - i. gross mismanagement,
 - ii. gross waste,
 - iii. substantial and specific danger to public health or safety,
 - iv. abuse of authority, or
 - v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (4) **Section 902 – Access Of Government Accountability Office.** The Contractor shall provide that the Comptroller General and his representatives are authorized:
- i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
 - ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) **Section 1514 – Inspector General Reviews.** Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) **Section 1515 – Access of Offices of Inspector General to Certain Records and Employers.** With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
- i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
 - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) **Section 1606 – Wage Rate Requirements.** All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
 - e. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
 - f. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.10., “Federal Economic Stimulus Funding.”
- E.11. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor’s Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor’s preceding completed fiscal year, if in the Contractor’s preceding fiscal year it received:
 - i. 80 percent or more of the Contractor’s annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

Executive means officers, managing partners, or any other employees in management positions.
 - (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.13. Work Product. In the event and to the extent that any work product provided in connection with the services rendered under this Contract contains or requires for its use any intellectual property, including any source code, audiovisual works or pictorial and graphic works, or other items, elements, or components that were developed or otherwise acquired by the Contractor prior to the date of this Contract and that are proprietary to Contractor ("Contractor's Retained Information"), the Contractor shall retain ownership thereof, and with respect thereto, the Contractor hereby grants to the State of Tennessee Department of Education, an irrevocable, perpetual, non-exclusive, royalty-free, world-wide license to use, reproduce, perform, and execute the Contractor's retained information.
- E.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

IN WITNESS WHEREOF,

HARRIS, MACKESY & BRENNAN, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF EDUCATION:

KEVIN HUFFMAN, COMMISSIONER

DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	35054
CONTRACTOR LEGAL ENTITY NAME:	Harris, Mackessy & Brennan, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	31-1410213

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