

**CONTRACT #3**  
**RFS # 347.01-11062**  
**Edison # Pending**

**Department of Revenue**

**VENDOR:**  
**Multistate Tax Commission**



**BILL HASLAM**  
Governor

**STATE OF TENNESSEE  
DEPARTMENT OF REVENUE  
ANDREW JACKSON STATE OFFICE BUILDING  
NASHVILLE, TENNESSEE 37242**

**RICHARD H. ROBERTS**  
Commissioner

June 3, 2014

The Honorable Bill Ketron, State Senator  
Chair, Joint Fiscal Review Contract Service Subcommittee  
309 War Memorial Building  
Nashville, Tennessee 37243-0213

Re: Proposed Non-Competitive Contract  
Multistate Tax Commission

Dear Senator Ketron:

The subject proposed contract between the Tennessee Department of Revenue and the Multistate Tax Commission ("MTC") is enclosed herewith for the review of your Subcommittee.

The Department of Revenue is authorized to enter into a contract to participate in the MTC Joint Audit Program pursuant to Tenn. Code Ann. §§ 67-1-102(b) and 67-1-1704(g). The Department's budget for FY 2014-15 includes an amount for such purpose.

The MTC is an intergovernmental agency that was created by the Multistate Tax Compact. Tennessee is an Associate and Project Member and has participated in the MTC National Nexus Program for some time. Tennessee has now participated in MTC Joint Audit Program since FY 2009-2010 and has collected over \$3,500,000 as a result of this participation.

We have found the MTC staff to be knowledgeable, courteous, professional, and dedicated to fulfilling the requirements of this contract. Their unique mission and structure make participation in the Joint Audit Program a cost-effective option for expanding the department's out-of-state audit coverage.

Listed below are the reasons why this contract should be awarded to the MTC as allowed by Tenn. Code Ann. Section 67-1-102(b):

1. Tennessee retains control and oversight over the MTC's audit services. Final decisions relating to assessment and collection of taxes remain within the control of the department.
2. Tennessee benefits from the joint audit program by ensuring the compliance of additional large out-of-state taxpayers that might otherwise escape review.

3. Connections have already been established for the Department of Revenue and MTC to ensure that MTC auditors have access to training and are versed in Tennessee tax laws, that periods open under the applicable statutes of limitations are protected, and that the appropriate lines of communication are maintained between our joint audit teams.
4. The MTC Joint Audit Program is a cost-effective option for expanding essentially the Department's own audit staff while benefitting from the access to tax filings submitted by several large taxpayers in all states participating in the joint audit program.
5. The cost savings that could be realized include the travel, training, equipment, salary, and benefits costs associated with potentially adding more out-of-state audit personnel. The proposed savings to be realized per fiscal year by entering the contract can easily be seen by a comparison of the expense associated with adding three additional out-of-state auditor positions for five years as compared to the total MTC fee. The costs of obtaining comparable deliverables by an expansion of in-house staff would be more costly by an estimated \$360,000.
6. Based upon the MTC's experience and the Department's past participation, it is conservatively estimated that this contract will result in additional tax collections of approximately \$10,000,000.
7. There are no other options for this service outside of adding and training additional Department personnel. In the MTC Program, Tennessee retains control and oversight over the MTC's audit services. Final decisions relating to assessment and collection of taxes remain within the control of the department. Thus, the MTC Joint Audit Program is a cost-effective option for expanding essentially the Department's own audit staff while benefitting from the access to tax filings submitted by several large taxpayers in all states participating in the joint audit program.

If you or members of your staff have questions or comments about the subject contract at any time, please do not hesitate to contact me. You may reach me by telephone at (615) 741-2461 or by e-mail at [Richard.Roberts@tn.gov](mailto:Richard.Roberts@tn.gov).

Sincerely,



Richard H. Roberts

Supplemental Documentation Required for  
Fiscal Review Committee

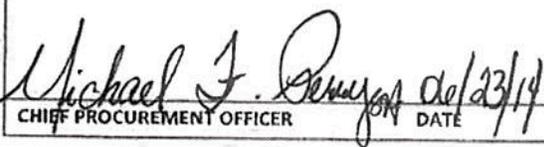
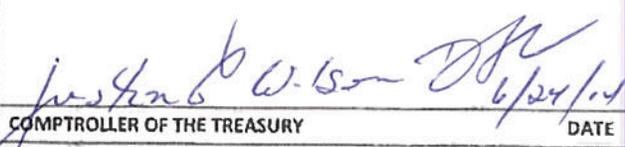
*Contact Name:	John Lamar	*Contact Phone:	615-253-1381		
*Presenter's name(s):	Richard Roberts – Commissioner, Phillip Mize – Deputy Commissioner, and Stacy Gibson – Audit Director				
Edison Contract Number: <i>(if applicable)</i>	Pending	RFS Number: <i>(if applicable)</i>	34701-11062		
*Original or Proposed Contract Begin Date:	8/16/14	*Current or Proposed End Date:	6/30/19		
Current Request Amendment Number: <i>(if applicable)</i>	N.A.				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N.A.				
*Department Submitting:	Department of Revenue				
*Division:	Audit				
*Date Submitted:	6/9/14				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Multistate Tax Commission				
*Current or Proposed Maximum Liability:	\$1,269,480				
*Estimated Total Spend for Commodities:	N.A.				
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:15	FY: 16	FY: 17	FY: 18	FY 19	FY
\$243,900	\$248,760	\$253,800	\$258,900	\$264,120	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY: N.A.	FY:	FY:	FY:	FY	FY
\$N.A	\$	\$	\$	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N.A.		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N.A.		
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N.A.		

Supplemental Documentation Required for  
Fiscal Review Committee

<b>*Contract Funding Source/Amount:</b>			
State:	\$1,269,480	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” 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.		N.A.	
Method of Original Award: <i>(if applicable)</i>		N.A.	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The MTC Executive Committee approved the audit and other program fees for FY 2015 at its May 8, 2014 meeting. The fee increase was 2%, which was consistent with what was previously projected by the MTC.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		The MTC is a unique intergovernmental agency that was specifically created by the Multistate Tax Compact. Based upon the results of the Joint Audit Program to date, the estimated revenue is conservatively \$6,000,000 to \$10,000,000 for a contract period of 5 years.	

# Special Contract Request

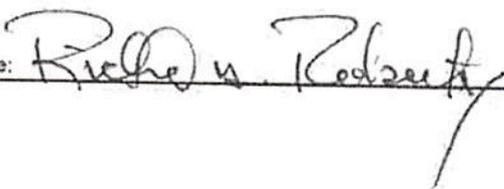
This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.  
 NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.  
 Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

<b>APPROVED</b>	<b>APPROVED</b>
 CHIEF PROCUREMENT OFFICER      ON DATE 6/23/14	 COMPTROLLER OF THE TREASURY      DATE 6/24/14

Request Tracking #	34701-11062
1. Contracting Agency	Department of Revenue
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> <del>Cost Source</del> <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input checked="" type="checkbox"/> Other <u>Non-Competitive</u>
3. Requestor Contact Information	John Lamar, (615) 253-1381
4. Brief Goods or Services Caption	Tax Auditing Services/MTC Joint Audit Program

Request Tracking #	34701-11062
5. Description of the Goods or Services to be Acquired	The services to be acquired are continued participation in the Multistate Tax Commission (MTC) Joint Audit Program as authorized by Tenn. Code Ann. §§ 67-1-102(10) and 67-1-1704(g). Tennessee is now an Associate and Project Member of the MTC. As a member of the MTC Joint Audit Program, the MTC operates as an arm of the Department; performs mutually agreed upon audits as though they were part of the Department's own audit staff; ensures that its audit staff is adequately trained in the applicable Tennessee tax laws; and forwards their findings and recommendations to the Department for the assessment and collection of taxes determined to be due at the completion of the audit.
6. Proposed Contractor	Multistate Tax Commission
7. Name & Address of the Contractor's principal owner(s) - NOT required for a TN state education institution	Joe Huddleston, Executive Director Multistate Tax Commission 444 N. Capitol St. NW, Suite 425 Washington, DC 20001 Phone: 202-624-8699 Fax: 202-624-8819 E-mail: <a href="mailto:mtc@mtc.gov">mtc@mtc.gov</a> Website: <a href="http://www.mtc.gov">www.mtc.gov</a>
8. Proposed Contract Period - with ALL options to extend exercised The proposed contract start date shall follow the approval date of this request.	58.5 months
9. Office for Information Resources Pre-Approval Endorsement Request - information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request - health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request - state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost - with ALL options to extend exercised	\$ 1,269,480
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,

Request Tracking #	34701-11062
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	The MTC Executive Committee approved the audit and other program fees for FY 2015 at its May 8, 2014 meeting. The fee increase was 2%, which was consistent with what was previously projected by the MTC.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	The rate is set by the MTC Executive Committee and has remained at much the same rate for several years. All States pay the same standard rate affected only by level of MTC membership and participation in both or either the sales and use tax audit program and corporate income tax program.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	The Department has been participating in the MTC Audit Program since approximately 2010. The Department's Audit Division Director has communicated with the MTC's Fiscal Director regarding the rate for a new contract period. Communications have been by phone or email.
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	Participation in the MTC Joint Audit Program assists Tennessee by offering a unique and cost-effective method for conducting additional tax audits. It assists in ensuring compliance among large multistate taxpayers beyond those already actively being pursued by the Department. The Joint Audit Program also assists Tennessee in identifying inconsistent reporting to different states by multistate taxpayers and offers Tennessee an additional resource and tool for adapting existing laws to new circumstances and industry practices that arise continuously.
19. Proposed contract impact on current State operations	The program produces revenue in excess of its costs and assists the state in maintaining its sales and use and franchise, excise tax bases.
20. Justification - Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The MTC is a unique intergovernmental agency that was specifically created by the Multistate Tax Compact. Based upon the results of the Joint Audit Program to date, the estimated revenue is conservatively \$6,000,000 to \$10,000,000 for a contract period of 5 years.
<b>For No Cost and Revenue Contracts Only</b>	
21. What costs will the State incur as a result of this contract? If any, please explain.	

Request Tracking #	34701-11062
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
<b>For Sole Source and Proprietary Procurements Only</b>	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	See response to No. 18.
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	The MTC was created by the Multistate Tax Compact in 1967 and has been operating its Joint Audit Program since 1972. Currently, 28 states participate in the Joint Audit Program.
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES. Method: Sole Source Name/Address: Same
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	The MTC is a unique intergovernmental agency that was specifically created by the Multistate Tax Compact.
<b>Signature Required for all Special Contract Requests</b>	
<b>Agency Head Signature and Date</b> – 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 circumstances	
Signature: 	6/6/14 Date:

## Sourcing Analyst Recommendation

APPROVED

  
Chief Procurement Officer

**DATE:** Monday, June 23, 2014

**SUBJECT:** Special Contract Request 34701-11062

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**RECOMMENDATION:**

Approve Special Contract Request 34701-11062.

**ANALYSIS:**

Special Contract Request 34701-11062 is a non-competitive request by the Department of Revenue, for Tax Auditing Services/MTC Joint Audit Program. This contract is for the participation in the MTC Joint Audit program. Participation in the MTC Joint Audit Program assists Tennessee by offering a unique and cost-effective method for conducting additional tax audits. This program offers Tennessee an additional resource and tool for adapting existing laws to new circumstances.

This program produces revenue in excess of its costs and assists the state in maintaining its sales and use, franchise, and excise tax bases.

This contract is for 58.5 months and the maximum contract cost is \$1,269,480. This approval would be contingent upon FRC and COT approval.

**Options/Alternatives:**

Accept: Approve Special Contract Request 34701-11062.  
Reject: Competitively procure



**Andy Kidd**  
Sourcing Analyst Team Lead

DRAFT

DRAFT

DRAFT

**CONTRACT**

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

<b>Begin Date</b> 8/16/14	<b>End Date</b> 06/30/19	<b>Agency Tracking #</b> 34701-11062	<b>Edison Record ID</b> TBD		
<b>Contractor Legal Entity Name</b> Multistate Tax Commission			<b>Edison Vendor ID</b> 45344		
<b>Service Caption (one line only)</b> Tax auditing services					
<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		<b>CFDA #</b> N.A.			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2015	\$243,900				\$243,900
2016	\$248,760				\$248,760
2017	\$253,800				\$253,800
2018	\$258,900				\$258,900
2019	\$264,120				\$264,120
<b>TOTAL:</b>	<b>\$1,269,480</b>				<b>\$1,269,480</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO					
<b>Ownership/Control</b>					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> NOT Minority/Disadvantaged <input checked="" type="checkbox"/> Other: intergovernmental state tax agency created by the Multistate Tax Compact in 1967					
<b>Selection Method &amp; Process Summary (mark the correct response to confirm the associated summary)</b>					
<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."			
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>OCR USE - FA</i>		
<b>Speed Chart (optional)</b>		<b>Account Code (optional)</b>			

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF REVENUE**  
**AND**  
**MULTISTATE TAX COMMISSION**

This Contract, by and between the State of Tennessee, **Department of Revenue**, hereinafter referred to as the "State" and **Multistate Tax Commission**, hereinafter referred to as the "Contractor," is for the provision of **tax auditing services**, as further defined in the "SCOPE OF SERVICES."

The Contractor is **an intergovernmental state tax agency created by the Multistate Tax Compact in 1967**.  
Contractor Place of Incorporation or Organization: **Washington, D.C.**  
Contractor Edison Registration ID # **45344**

**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.1.a. The Contractor agrees to operate as an arm of the State through the Contractor's Joint Audit Program. The Contractor agrees that its audit staff will perform mutually agreed upon audits as though they were part of the State's own audit staff. The Contractor will ensure that its audit staff is adequately trained in the applicable tax laws of the State and will be responsible for forwarding their findings and recommendations to the State for the assessment and collection of taxes determined to be due at the completion of the audit.

The State will participate with other member states in the selection of the audit candidates. The State will also make the decision as to whether or not to participate in a given audit and how to act upon the audit results. The State will also participate in the Contractor's Audit Committee and its oversight subcommittee(s) to guide the program and ensure that it is responsive to the State and other member state needs.

A.2. The Contractor shall audit the taxpayers mutually agreed upon by the parties for the purpose of establishing the sales and use or corporate income tax liability thereof, as the case may be. Except as may be specifically agreed to by the parties hereto, the normal audit period to be reviewed shall be three years in the case of income tax and to the extent of the applicable statute of limitation years (up to four years) in the case of sales and use tax.

A.3. Unless determined otherwise by the *State* and the Contractor prior to the commencement of an audit, any and all audits authorized hereunder shall be conducted substantially in accordance with the Multistate Tax Commission (MTC) Audit Manuals which have been reviewed and are hereby approved by the State for the purpose of this Agreement. Notwithstanding the foregoing, the State shall be entitled to supervise and direct the conduct of any and all aspects of the audits authorized hereunder with respect to the determination of taxpayer's liability to the State. If, however, in the exclusive judgment of the Contractor, such supervision or direction interferes or threatens to interfere with the audits of taxpayer with respect to the MTC member states, the Contractor may elect, upon five days written notice, to terminate its agency relationship with respect to the audit(s) so affected or to take such other action as may be required to protect the interests of the MTC member states. In the event of such termination, the Contractor shall take reasonable efforts to assist the State in the State's continuation of the affected audit(s) by the State's own employees or other agents.

A.4. It is understood and agreed that after its initial contact of any given taxpayer agreed upon by the parties to be subject to audit hereunder by the Contractor, the Contractor may determine that it is not feasible to continue said audit or audits to completion. Such determination shall be made in the exclusive judgment of the Contractor, after consultation with a representative of the State. Upon making such a determination, the Contractor shall provide written notification thereof to the State.

- A.5. With respect to any audit candidates to be selected during the term of this Agreement, the State shall be polled with respect thereto in the identical manner that member states are polled. In addition, the State shall be entitled to fully participate in the vote on any and all issues brought before the MTC's Audit Committee including but not limited to the selection of audit candidates.
- A.6. Upon the timely request of the State to join an MTC audit, the State shall be required to execute and timely deliver to the MTC its written authorization of the MTC to audit the taxpayer on its behalf. Failure to timely deliver said authorization shall preclude the State from joining said audit unless the MTC shall determine, in its exclusive judgment, to proceed on behalf of the State after the receipt of the State's authorization. A request and authorization shall be considered timely if the authorization is received by the MTC at least 5 days prior to the scheduled commencement of the audit.
- A.7. If, upon the date of termination hereof, any one or more audits in which the State is a party is not completed by the issuance of an audit report by the MTC, this Agreement shall be extended automatically until the date upon which the last audit report is issued for the State. No further payments shall be made by the State for the period of the extension.

**B. CONTRACT PERIOD:**

This Contract shall be effective for the period beginning 8/16/14 and ending on 6/30/19. 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.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **one million two hundred sixty nine thousand and four hundred eighty dollars (\$1,269,480)**. 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)
Taxpayer Auditing Services 8/16/14 through 12/31/14	\$121,950
Taxpayer Auditing Services 1/1/15 through 6/30/15	\$121,950
Taxpayer Auditing Services 7/1/15 through 12/31/15	\$124,380
Taxpayer Auditing Services 1/1/16 through 6/30/16	\$124,380
Taxpayer Auditing Services 7/1/16 through 12/31/16	\$126,900
Taxpayer Auditing Services 1/1/17 through 6/30/17	\$126,900
Taxpayer Auditing Services 7/1/17 through 12/31/17	\$129,450
Taxpayer Auditing Services 1/1/18 through 6/30/18	\$129,450
Taxpayer Auditing Services 7/1/18 through 12/31/18	\$132,060
Taxpayer Auditing Services 1/1/19 through 6/30/19	\$132,060

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:

Tennessee Department of Revenue  
Audit Division  
P.O. Box 190644  
Nashville, TN 37219-0644

- 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: **Department of Revenue & Audit Division;**
  - (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 **One**, 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.
- D. 22. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.

- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

**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:

Hal Jones, Tax Audit Manager, Audit Division  
Tennessee Department of Revenue  
5665 New Northside Drive, #160  
[Hal.Jones@tn.gov](mailto:Hal.Jones@tn.gov)  
Telephone # 770-541-5981  
FAX # 770-541-5999

The Contractor:

Joe Huddleston, Executive Director  
Multistate Tax Commission  
444 North Capitol St., NW  
Suite 425  
Washington, D.C. 20001  
[jhuddleston@mtc.gov](mailto:jhuddleston@mtc.gov)  
Telephone # 202-650-0300

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. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.
- E.6. Confidentiality of State Records. Strict standards of confidentiality of records of the State shall be maintained in accordance with the law. All material and information, regardless of form, medium, or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State, whether verbal, written, magnetic tape, cards or otherwise, 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 Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor shall maintain the confidentiality of any "Return," "Tax Information" or "Tax Administration Information" as defined by Tenn. Code Ann. Sec. 67-1-1701, generated or acquired pursuant to this Contract. Such "Return," "Tax Information," or "Tax Administration Information" shall be protected as confidential by the Contractor in accordance with the requirements of Tenn. Code Ann. Sec. 67-1-1702 and other applicable laws and regulations. In addition to maintaining the confidentiality of any "Return," "Tax Information," or "Tax Administration Information," the Contractor shall also maintain the confidentiality of other information which it acquires from the State under the Contract that is marked "Confidential" and shall not disclose such information to any third party unless specifically authorized to do so in writing by the State.

The Contractor 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 Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first or second paragraphs of this section.

The Contractor's obligations under this section do not apply to information entering the public domain but not from a breach by the Contractor of this Contract or previously possessed by the contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

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

- E.6. 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 offence 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.

IN WITNESS WHEREOF,

**MULTISTATE TAX COMMISSION:**

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<b>CONTRACTOR SIGNATURE</b>	<b>DATE</b>
<b>Joe Huddleston, Executive Director</b>	

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF REVENUE:**

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<b>RICHARD H. ROBERTS, COMMISSIONER</b>	<b>DATE</b>
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**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

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

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

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**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.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**