

CONTRACT #6
RFS # 347.01-11092
Edison # 38825

Department of Revenue

VENDOR:
FuelQuest, Inc. d.b.a.
Zytax, Inc.



BILL HASLAM
Governor

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

RICHARD H. ROBERTS
Commissioner

June 26, 2014

The Honorable Bill Ketron, State Senator
Chair, Fiscal Review Committee
309 War Memorial Building
Nashville, Tennessee 37243-0213

Re: Proposed Contract Amendment #1 – Change Vendor Name from Zytax, Inc to
Avalara, Inc.

Dear Senator Ketron:

Avalara, Inc. has acquired Zytax, Inc and the Tennessee Department of Revenue submits an amendment changing the vendor name for the review of your Subcommittee.

The contract upgrades the existing software that is used for Motor Fuel EDI and Tracking to a new version and was previously approved by the Subcommittee.

Avalara, Inc, founded in 2004, is a world- wide cloud-based software platform provider that delivers a broad array of compliance solutions related to sales tax and other transaction taxes such as VAT. Zytax has been providing motor fuel tax solutions for State Governments since 2004.

The Department of Revenue believes it is in the best interest of the Taxpayers, TDOR and the State to accept the vendor name change. Any disruption could cause the Department of Revenue to not be in compliance with TCA Section 67-3-706, which provides that all motor fuel tax reports are required to be filed by means of electronic data interchange.

Sincerely,

A handwritten signature in black ink that reads "Richard H. Roberts".

Richard H. Roberts

RR:JAL

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> | 38825 | RFS Number: <i>(if applicable)</i> | 34701-11092 | | |
| *Original or Proposed Contract Begin Date: | 10/1/13 | *Current or Proposed End Date: | 9/30/16 | | |
| Current Request Amendment Number: <i>(if applicable)</i> | #1 | | | | |
| Proposed Amendment Effective Date: <i>(if applicable)</i> | 10/1/14 | | | | |
| *Department Submitting: | Revenue | | | | |
| *Division: | Audit | | | | |
| *Date Submitted: | 7/7/14 | | | | |
| *Submitted Within Sixty (60) days: <i>If not, explain:</i> | Yes | | | | |
| *Contract Vendor Name: | Zytzx, Inc (name change will be Avalara, Inc). | | | | |
| *Current or Proposed Maximum Liability: | \$287,000 | | | | |
| *Estimated Total Spend for Commodities: | NA | | | | |
| *Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i> | | | | | |
| FY:14 | FY:15 | FY:16 | FY: | FY | FY |
| \$101,800 | \$150,000 | \$35,200 | \$ | \$ | \$ |
| *Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i> | | | | | |
| FY:14 | FY: | FY: | FY: | FY | FY |
| \$46,400 | \$ | \$ | \$ | \$ | \$ |
| IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: | | | Waiting on completion of Phase 2 (Design). Surplus funds (as overcollection) revert to the General Fund. | | |
| IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision: | | | NA | | |
| IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding | | | NA | | |

Supplemental Documentation Required for
Fiscal Review Committee

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|--|-----------|--|--|
| was acquired to pay the overage: | | | |
| *Contract Funding Source/Amount: | | | |
| State: | \$16,000 | Federal: | |
| <i>Interdepartmental:</i> | \$271,100 | <i>Other:</i> | |
| If "other" please define: | | | |
| If "interdepartmental" please define: | | From Tennessee Department of Transportation | |
| 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? How was this cost determined? | | The original contract was procured through the non-competitive methodology, including Fiscal Review approval. The contract cost was a result of the process. | |
| *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 current vendor Zytax was acquired by Avalara, Inc. The purpose of the amendment is to change the contract vendor name and contact information. | |

Amendment #1 Contract #388925 (Zyrex, Inc with request to change name to Avalara, Inc)
 Current Total Expenditures by Fiscal Year of Contract:
 (attach backup documentation from Edison)

| Unit | Journal ID | Line # | Ledger | Orig Descr | Source | Account | Account Descr | Dept | Fund | Location | Use Code | Year | Period | Amount | Posted | Voucher | Invoice ID | Vendor ID | Vendor Name | PO No | Descr | Monetary Amount | Yr1 Date |
|-------|------------|--------|------------|-----------------|--------|----------|-------------------------------|-----------|------|----------|----------|------|--------|-----------|------------|---------|-------------|------------|-------------|------------|---------------------------------|-----------------|------------|
| 34701 | AP01504715 | 4 | ACTUALS AP | Voucher Accrual | AP | 72203000 | Data Processing Svcs by MonSI | 347140300 | 1100 | 19051 | 110045 | 2014 | 6 | 46,400.00 | 12/09/2013 | 0003074 | PSINV-00982 | 0000001400 | Zy Tax Inc | 0000014040 | Motor Fuel Tracking (Cross Mail | 46,400.00 | 12/09/2013 |



OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Contracts
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : John Lamar
E-mail : john.lamar@tn.gov

DATE : 06/13/14

RE : Request for OIR Pre-Approval Endorsement

| |
|--|
| Applicable RFS # 34701-11092 |
| OIR Endorsement Signature & Date: |
|  6/16/14 |
| 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 is required pursuant to procurement regulations pertaining to contracts 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 document(s). This requirement applies to any procurement method regardless of dollar amount.

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

| | |
|--|--|
| Contracting Agency | Department of Revenue |
| Agency Contact (name, phone, e-mail) | John Lamar, (615) 253-1381, john.lamar@tn.gov |
| Attachments Supporting Request (mark all applicable) Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to OIR. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. OIR is aware that these documents will not have CPO signature when submitted with this request. | |
| <input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input checked="" type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input checked="" type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) | |
| Information Systems Plan (ISP) Project Applicability | |

Amendment Request

Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agspr@tn.gov



APPROVED

Michael S. Perry /PPJ
7/11/14

CHIEF PROCUREMENT OFFICER DATE

| | | |
|--|---|--|
| Request Tracking # | 34701-11092 | |
| 1. Procuring Agency | Department of Revenue | |
| 2. Contractor | Zytax, Inc (name change will be Avalara, Inc) | |
| 3. Contract # | #38825 | |
| 4. Proposed Amendment # | One | |
| 5. Edison ID # | #38825 | |
| 6. Contract Begin Date | | 10/1/13 |
| 7. Current Contract End Date <i>- with ALL options to extend exercised</i> | | 9/30/16 |
| 8. Proposed Contract End Date <i>- with ALL options to extend exercised</i> | | 9/30/16 |
| 9. Current Maximum Contract Cost <i>- with ALL options to extend exercised</i> | | \$287,000 |
| 10. Proposed Maximum Contract Cost <i>- with ALL options to extend exercised</i> | | \$287,000 |
| 11. Office for Information Resources Pre-Approval Endorsement Request <i>- information technology service (N/A to THDA)</i> | <input type="checkbox"/> Not Applicable | <input checked="" type="checkbox"/> Attached |
| 12. eHealth Pre-Approval Endorsement Request <i>- health-related professional, pharmaceutical, laboratory, or imaging</i> | <input checked="" type="checkbox"/> Not Applicable | <input type="checkbox"/> Attached |
| 13. Human Resources Pre-Approval Endorsement Request <i>- state employee training service</i> | <input checked="" type="checkbox"/> Not Applicable | <input type="checkbox"/> Attached |
| 14. Explanation Need for the Proposed Amendment | <p>The current vendor Zytax, Inc was acquired by Avalara, Inc. Therefore, the current contract name and contact information requires update.</p> <p style="text-align: right;"><i>contractor's</i></p> | |
| 15. Name & Address of the Contractor's Principal Owner(s) <i>- NOT required for a TN state education institution</i> | <p>Avalara, Inc. 100 Ravine Lane, NE Suite 220</p> | |

Applicable RFS # 34701-11092

To avoid delay of OIR pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to OIR. If necessary, agency IT staff should contact OIR Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Bill Shanko

Applicable – Approved ISP Project# DG 309

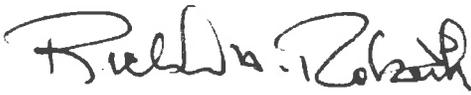
Not Applicable

Subject Information Technology Service Description

Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.

Zytax has been acquired by Avalara, Inc. CPO requires OIR Pre-approval as part of the Amendment Request. OIR has previously approved an endorsement related to this project (see enclosed).

Contractor will provide an upgrade to existing fuel tax software. The new version provides increased functionality for TDOR and taxpayers including on-line capability for taxpayers to enter manual tax data and to submit electronic tax returns, and web-based access for TDOR staff to electronic tax return data. The upgrade is needed to enable auditors in the field to easily access taxpayer information via a web-based system. The new version also will provide taxpayers with on-line capability to enter and submit tax returns directly through a website instead of having to either purchase software or pay a software company for E-filing services. The new version of this fuel tax software will be web-based instead of client-server based. TDOR personnel will access the system via the Internet. User training will be included in the contract to help mitigate any issues with staff using the new version.

| | |
|--|-------------|
| Request Tracking # | 34701-11092 |
| Bainbridge Island, WA 98110 | |
| 16. Evidence Contractor's Experience & Length Of Experience Providing the Goods or Services | |
| Avalara, Inc, founded in 2004, is a world- wide cloud-based software platform provider that delivers a broad array of compliance solutions related to sales tax and other transaction taxes such as VAT. Zytax has been providing motor fuel tax solutions for State Governments since 2004. | |
| 17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives | |
| Not applicable since the intent of the amendment is to recognize name change and contact information for Avalara, Inc.'s acquisition of Zytax, Inc. | |
| 18. Justification | |
| The amendment will allow DOR to continue applications with the capability to accept EDI files from taxpayers, generate tax returns, report and analyze transactions included in tax returns and provide Cross-Match reporting that compares filings of different taxpayers. The application utilizes a proprietary database and contains tax return functionality in a manner that is specialized to motor fuel tax reporting. | |
| 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 circumstances</i> | |
|  7/3/14 | |



CONTRACT AMENDMENT COVER SHEET

| | | | |
|--|---------------------------|----------------------------|------------------------------------|
| Agency Tracking # 347-11092 | Edison ID 38825 | Contract # 38825 | Amendment # One |
| Contractor Legal Entity Name Zytax, Inc (name change will be Avalara, Inc) | | | Edison Vendor ID 0001400 |

Amendment Purpose & Effect(s)
Change vendor name from Zytax, Inc to Avalara, Inc by Contract Assignment

Amendment Changes Contract End Date: YES NO **End Date:** 9/30/16

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): \$ 0

| Funding — | | | | | |
|---------------|-----------------|---------|-------------------|-------|-----------------------|
| FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount |
| 2014 | \$7,000 | | \$94,800 | | \$101,800 |
| 2015 | \$8,000 | | \$142,000 | | \$150,000 |
| 2016 | \$1,000 | | \$34,200 | | \$35,200 |
| | | | | | |
| | | | | | |
| TOTAL: | \$16,000 | | \$271,100 | | \$287,000 |

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

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.

CPO USE

| | |
|---|---|
| Speed Chart (optional) RV00000109 | Account Code (optional) 7220300 |
|---|---|

AMENDMENT ONE OF CONTRACT 38825

This Amendment is made and entered by and between the State of Tennessee, Department of Revenue, hereinafter referred to as the "State" and Zytax, Inc., hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section Preamble is deleted in its entirety and replaced with the following:

The Contractor is a For-Profit Corporation
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 177374

2. Contract section E.2. is deleted in its entirety and replaced with the following:

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by 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:

Ray Grigsby, Audit Manager
Tennessee Department of Revenue – Audit Division
500 Deaderick Street
12th Floor – Andrew Jackson State Office Building
Nashville, Tn 37242
ray.grigsby@tn.gov
Telephone # (615) 532-6914
FAX # (615) 741-5319

The Contractor:

Steve Shannon, Senior Director of Product Design, Excise Tax Division
Avalara, Inc.
100 Ravine Lane NE, Suite 220
Bainbridge Island, WA 98110
Email Address: steve.shannon@avalara.com
Telephone # (832) 668-5534
FAX # (206) 780-5011

3. The following is added as Contract section E.8.:

E.8. Contractor Name. All references to "Zytax, Inc." shall be deleted and replaced with "Avalara, Inc."

Required Approvals. The State is not bound by this Amendment 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).

DRAFT

11-20-13 AMEND-K

Amendment Effective Date. The revisions set forth herein shall be effective 10/1/14. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

AVALARA, INC.:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF REVENUE:

RICHARD H. ROBERTS, COMMISSIONER

DATE

Contract Approval – Agency Legal Certification

A completed contract routed for Central Procurement Office (CPO) approval via Edison must be accompanied by this Agency Legal Certification template that has been signed and attached in PDF format.

| | |
|---|---|
| 1. Edison Contract ID # | |
| 2. Contracting Agency Name | Department of Revenue |
| 3. Contractor Name | Zytax, Inc (name change will be Avalara, Inc) |
| 4. Service Caption | Motor Fuels EDI Software Upgrade |
| 5. Agency Contact (name, phone, e-mail) | John Lamar, (615) 253-1381, john.lamar@tn.gov |

6. Legal Certification

By signing below, the department's legal staff certifies that:

- 1) the contract as submitted includes only CPO template language (unless the agency has obtained an approved rule exception request);
- 2) the contract is legally sufficient both in form and substance to protect the best interests of the State; and
- 3) the contract does not contravene applicable law.

Knigh' - Hugar 6/17/14

Agency Attorney Signature & Date

7. (Optional) Alternative to Legal Certification Request

Note: If there are extenuating circumstances and a department's legal staff is unable to certify to a contract in the above manner, you must provide a written explanation with Agency Head signature, in the space provided below. Once the explanation is received by the CPO, instructions will be provided to the department as to what will be needed in order to gain approval of the contract, e.g., providing a Microsoft Word version of the contract, etc. **Please keep in mind that this alternative will slow down the approval process and should be the exception, not the rule.**

Justification

Agency Head Signature & Date – contracting agency head or authorized signatory



100 Ravine Lane NE, Suite 220
Bainbridge Island, WA 98110
www.avalara.com

(206) 826-4900
(877) 780-4848
F: (206)780-5011

Avalara, Inc., (www.Avalara.com), is a leading provider of cloud-based software that delivers a broad array of compliance solutions related to sales tax and other transactional taxes. Avalara acquired from FuelQuest, Inc. the Zytax energy-related tax automation solutions for U.S. and international jurisdictions. Accordingly, from April 25, 2014 and continuing thereafter throughout the term of the Zytax agreements with the State of Tennessee Department of Revenue, Avalara shall be substituted for Zytax for all purposes and will be bound by the terms and conditions of such agreements. In connection with the Zytax transaction, Avalara retained the Zytax development and support teams and now employs 83 employees formerly with Zytax. In addition, Avalara has additional open positions resulting from further investment into the product line.

About Avalara

Avalara helps businesses of all sizes achieve compliance with sales tax and other transactional tax requirements by delivering comprehensive, automated, cloud-based solutions that are fast, accurate, and easy to use. Avalara's end-to-end suite of solutions are designed to effectively manage the complicated and burdensome tax compliance obligations imposed by state, local, and other taxing authorities in the United States and internationally.

Avalara is integrated with leading accounting, ERP, ecommerce and other business applications. Founded in 2004 and privately-held, Avalara's venture capital investors include Battery Ventures, Sageview Capital, Arthur Ventures, and other institutional and individual investors. Avalara employs more than 700 people at its headquarters on Bainbridge Island, WA and in offices across the U.S. and in London, England and Pune, India.

Other Key Facts

- The company has raised over \$100 million and has experienced really strong growth since founding.
- Independent Audit Firm: Deloitte and Touche
- Banking Relationships – Bank of America and Silicon Valley Bank



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman

Senators

Douglas Henry Reginald Tate
Brian Kelsey Ken Yager
Steve Southerland
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Mark White, Vice-Chairman

Representatives

Charles Curtiss Pat Marsh
Jeremy Faison Mark Pody
Brenda Gilmore David Shepard
Matthew Hill Tim Wirgau
Charles Sargent, *ex officio*
Speaker Beth Harwell, *ex officio*

M E M O R A N D U M

TO: Mike Perry, Chief Procurement Officer
 Department of General Services

FROM: Senator Bill Ketron, Chairman BK
 Representative Mark White, Vice-Chairman MW

DATE: August 21, 2013

SUBJECT: **Contract Comments**
 (Fiscal Review Committee Meeting 8/19/13)

RFS# 347.01-11059 (Edison # Pending)

Department: Revenue

Vendor: FuelQuest, Inc., d.b.a. Zytax, Inc.

Summary: The proposed three-year contract is to upgrade the existing Zytax software that is used for Motor Fuel Electronic Data Interchange and Tracking. The proposed contract has a term beginning October 1, 2013, and ending September 30, 2016, with a maximum liability of \$287,000. Proposed maximum liability: \$287,000

After review, the Fiscal Review Committee voted to recommend approval of the contract.

cc: The Honorable Richard Roberts, Commissioner



BILL HASLAM
Governor

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

RICHARD H. ROBERTS
Commissioner

July 17, 2013

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

Re: Proposed New Non-Competitive Contract – FuelQuest Inc.

Dear Senator Ketron:

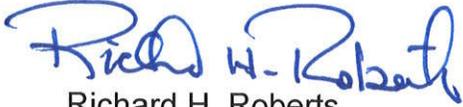
The subject proposed new contract between the Tennessee Department of Revenue and FuelQuest Inc. ("Zytax") is enclosed herewith for the review of your Subcommittee. The purpose of this contract is to upgrade the existing Zytax software that is used for Motor Fuel EDI and Tracking to a new version. The current version of the software that is used by TDOR is over 10 years old and is no longer being supported by the vendor.

The new version is a web-based system that will be accessed by taxpayers as well as TDOR staff. The new version which we propose to acquire will provide taxpayers with the capability to be able to log on directly to the website, submit their tax returns, and receive notification of acceptance almost immediately. This will be especially beneficial to many taxpayers, who will no longer need to purchase vendor software or pay a monthly fee for a vendor to transfer file information into an electronic format. Under our current system, filers are paying significant fees to vendors to meet the State of Tennessee's mandatory electronic filing requirements.

The Zytax Government application utilizes a proprietary database and contains tax return functionality in a manner that is specialized to motor fuel tax reporting. An upgrade of the Zytax Government 4 application cannot be provided by a vendor other than FuelQuest due to the proprietary nature of the database and application code within the application. FuelQuest does not provide the details of this proprietary functionality to other vendors and as a result FuelQuest is the only vendor qualified to upgrade the Zytax product. TDOR did contact another vendor who has a similar product, but the cost was almost 4 times what this upgrade project will cost.

The Department of Revenue believes it is in the best interest of the Taxpayers, TDOR and the State to upgrade the Motor Fuels EDI software. Any disruption could cause the Department of Revenue to not be in compliance with TCA Section 67-3-706, which provides that all motor fuel tax reports are required to be filed by means of electronic data interchange.

Sincerely,

A handwritten signature in blue ink that reads "Richard H. Roberts". The signature is written in a cursive style with a large initial "R".

Richard H. Roberts

RR:JAL

Supplemental Documentation Required for
Fiscal Review Committee

| | | | | | |
|---|------------|---|----------------|---------|---------|
| *Contact Name: | John Lamar | *Contact Phone: | (615) 253-1381 | | |
| *Original Contract Number: | N.A. (New) | *Original RFS Number: | 34701-11059 | | |
| Edison Contract Number: <i>(if applicable)</i> | N.A. (New) | Edison RFS Number: <i>(if applicable)</i> | N.A. | | |
| *Original Contract Begin Date: | 10/1/2013 | *Current End Date: | 9/30/16 | | |
| Current Request Amendment Number: <i>(if applicable)</i> | N.A. | | | | |
| Proposed Amendment Effective Date: <i>(if applicable)</i> | N.A. | | | | |
| *Department Submitting: | Revenue | | | | |
| *Division: | Processing | | | | |
| *Date Submitted: | 7/18/13 | | | | |
| *Submitted Within Sixty (60) days: | Yes | | | | |
| <i>If not, explain:</i> | | | | | |
| *Contract Vendor Name: | Zytax, Inc | | | | |
| *Current Maximum Liability: | \$287,000 | | | | |
| *Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i> | | | | | |
| FY: 2014 | FY:2015 | FY: 2016 | FY:2017 | FY:2018 | FY:2019 |
| \$101,800 | \$150,000 | \$35,200 | | | |
| *Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i> | | | | | |
| FY: | FY: | FY: | FY: | FY | FY |
| \$0 | \$ | \$ | \$ | \$ | \$ |
| 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 | State: | \$16,000 | Federal: | | |

Supplemental Documentation Required for
Fiscal Review Committee

| | | | | |
|--|--|--|--|--|
| Source/Amount: | | | | |
| <p>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.</p> <p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p> | | | | |

| | | | |
|--|-----------|--|--|
| Interdepartmental: | \$271,000 | Other: | |
| If "other" please define: | | | |
| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i> | | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i> | |
| N.A. | | N.A. | |
| | | | |
| Method of Original Award: <i>(if applicable)</i> | | Non-Competitive Negotiation | |
| *What were the projected costs of the service for the entire term of the contract prior to contract award? | | None | |

Supplemental Documentation Required for
Fiscal Review Committee

| Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures. | | | | | |
|---|-----|-----|-----|-----|-----|
| Deliverable description: | FY: | FY: | FY: | FY: | FY: |
| See Attachment One | | | | | |
| | | | | | |
| Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable. | | | | | |
| Deliverable description: | FY: | FY: | FY: | FY: | FY: |
| See Attachment Two | | | | | |
| | | | | | |
| | | | | | |
| Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables. | | | | | |
| Proposed Vendor Cost: (name of vendor) | FY: | FY: | FY: | FY: | FY: |
| See Attachment Two | | | | | |
| Other Vendor Cost: (name of vendor) | FY: | FY: | FY: | FY: | FY: |
| | | | | | |
| Other Vendor Cost: (name of vendor) | FY: | FY: | FY: | FY: | FY: |
| | | | | | |

Supplemental Documentation Required for Fiscal Review Committee

ATTACHMENT ONE

- 1. Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures. Directions: List all deliverables within the contract and the proposed cost for each. Should the deliverables be too numerous to include here, provide a copy of the contract section C.3.**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two hundred and eighty-seven thousand dollars (\$287,000). 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) |
|---------------------------------|--|
| Completion of Define Phase | \$46,400.00 |
| Completion of Design Phase | \$46,400.00 |
| Completion of Development Phase | \$46,400.00 |
| Completion of Deployment Phase | \$112,800.00 |
| Change Order | \$35,000.00 |

Supplemental Documentation Required for Fiscal Review Committee

ATTACHMENT TWO

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.

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).

Response:

The purpose of this contract is to upgrade the existing Zytax software that is used for Motor Fuel EDI and Tracking to a new version. The current version of the software that is used by TDOR is over 10 years old and is no longer being supported by the vendor. The new version is a web-based system that will be accessed by taxpayers as well as TDOR staff. The new version will provide taxpayers with the capability to be able to log on directly to the website, submit their tax returns, and receive notification of acceptance almost immediately. This will be especially beneficial to many taxpayers, who will no longer need to purchase vendor software or pay a monthly fee for a vendor to transfer file information into an electronic format. Under our current system, filers are paying significant fees to vendors to meet the State of Tennessee's mandatory electronic filing requirements.

The Zytax Government application utilizes a proprietary database and contains tax return functionality in a manner that is specialized to motor fuel tax reporting. An upgrade of the Zytax Government 4 application cannot be provided by a vendor other than FuelQuest due to the proprietary nature of the database and application code within the application. FuelQuest does not provide the details of this proprietary functionality to other vendors and as a result FuelQuest is the only vendor qualified to upgrade the Zytax product. TDOR did contact another vendor who has a similar product, but the cost was almost 4 times what this upgrade project will cost.

The Department of Revenue believes it is in the best interest of the Taxpayers, TDOR and the State to upgrade the Motor Fuels EDI software. Any disruption could cause the Department of Revenue to not be in compliance with TCA Section 67-3-706, which provides that all motor fuel tax reports are required to be filed by means of electronic data interchange.

Special 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: agsprs.agsprs@tn.gov.

APPROVED

Michael J. Perry (PPK)
Chief Procurement Officer

| | |
|---|--|
| Request Tracking # | 34701-11059 |
| 1. Contracting Agency | Department of Revenue |
| 2. Type of Contract | <input checked="" type="checkbox"/> Non-Competitive <input type="checkbox"/> No Cost <input type="checkbox"/> Revenue |
| 3. Requestor Contact Information | John Lamar, (615) 253-1381, john.lamar@tn.gov |
| 4. Date Requested | July 3, 2013 |
| 5. Brief Service Caption | Zyfax Upgrade Project |
| 6. Proposed Contractor | FuelQuest, Inc. (Zyfax) |
| 7. Proposed Contract Period - with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i> | 36 months |
| 8. Maximum Contract Cost - with ALL options to extend exercised | \$ 287,000 |
| 9. Office for Information Resources Endorsement <i>- Information technology (N/A to THDA)</i> | <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached |
| 10. eHealth Initiative Support <i>- health-related professional, pharmaceutical, laboratory, or imaging</i> | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached |
| 11. Human Resources Support <i>- state employee training</i> | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached |
| 12. Has the contracting agency procured the subject service before ? | |
| <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input type="checkbox"/> Non-Competitive Negotiation <input type="checkbox"/> Another Competitive Method | |
| 13. Will the State incur any substantial cost as a result of the subject agreement? (For No Cost or Revenue Contracts <u>only</u>) | <input type="checkbox"/> NO <input type="checkbox"/> YES <input checked="" type="checkbox"/> Not Applicable |
| 14. Will the State also contract with other parties interested in entering substantially the same agreement? | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES |
| 15. Description of Product/Services Contractor Will Provide - Contractor will provide an upgrade to existing | |

| | |
|---|---|
| Request Tracking # | 34701-11059 |
| fuel tax software. The new version provides increased functionality for TDOR and taxpayers including on-line capability for taxpayers to enter manual tax data and to submit electronic tax returns, and web-based access for TDOR staff to electronic tax return data. | |
| 16. Is this product/service currently available on a statewide contract? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES | |
| If YES, please explain why the current statewide contract is not being used for this procurement. | |
| 17. Summary of State Responsibilities Under Proposed Contract (For No Cost and Revenue Contracts <u>only</u>) - N/A | |
| 18. Explanation of Need for or Requirement Placed on the State to Acquire the Service - The upgrade is needed to enable auditors in the field to easily access taxpayer information via a web-based system. The new version also will provide taxpayers with on-line capability to enter and submit tax returns directly through a website instead of having to either purchase software or pay a software company for E-filing services. | |
| 19. Proposed Contract Impact on Current State Operations - The new version of this fuel tax software will be web-based instead of client-server based. TDOR personnel will access the system via the Internet. User training will be included in the contract to help mitigate any issues with staff using the new version. | |
| 20. Justification - The Zytax Government applications provide the capability to accept EDI files from taxpayers, generate tax returns, report and analyze transactions included in tax returns and provide Cross-Match reporting that compares filings of different taxpayers. The Zytax Government application utilizes a proprietary database and contains tax return functionality in a manner that is specialized to motor fuel tax reporting. An upgrade of the Zytax Government 4 application cannot be provided by a vendor other than FuelQuest due to the proprietary nature of the database and application code within the application. FuelQuest does not provide the details of this proprietary functionality to other vendors and as a result FuelQuest is the only vendor qualified to upgrade the Zytax product. | |
| 21. Contractor Selection Process and Efforts to Identify Reasonable, Competitive, Procurement Alternatives - TDOR did contact another vendor who has a similar product, but the cost was almost 4 times what this upgrade project will cost. | |
| 22. Name & Address of the Contractor's Principal Owner(s) - FuelQuest, Inc. 9 Greenway Plaza, Suite 1800 Houston, TX 77046 | |
| 23. Evidence of Contractor's Experience & Length Of Experience Providing the Service - Since its founding in 1999, FuelQuest has focused on providing innovative, technology-based solutions to the energy industry and state, local and federal tax authorities. FuelQuest's Zytax solutions are designed to reduce the cost and improve the accuracy of indirect tax determination and excise motor fuels compliance. FuelQuest has been providing motor fuel tax solutions for State Governments since 2004. FuelQuest has engaged with 5 total states to provide motor fuel tax capability that allows taxpayers to file electronically and allow state governments to manage their motor fuel tax requirements. | |
| 24. Was there an Initial government estimate? | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES |
| 25. Cost Determination Used - Through a series of vendor proposals, presentations, and conference calls | |
| 26. Documentation of Discussions with Contractor- Through a series of vendor proposals, emails, and several versions of vendor Statements of Work | |
| 27. Explanation of Fair and Reasonable Price - TDOR did contact another vendor who has a similar product, but the cost was almost 4 times what this upgrade project will cost. | |

| | |
|--|-------------|
| Request Tracking # | 34701-11059 |
| <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><i>Richard R. Smith</i> 7/12/2013</p> | |



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 : John Lamar
E-mail : john.lamar@tn.gov

DATE : 6/26/13

RE : Request for OIR Pre-Approval Endorsement

| | |
|--|-------------|
| Applicable RFS # | 34701-11059 |
| OIR Endorsement Signature & Date: | |
|  Chief Information Officer | |
| 7/3/13 | |
| <i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i> | |

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

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

| | |
|--|--|
| Contracting Agency | Department of Revenue |
| Agency Contact (name, phone, e-mail) | John Lamar, (615) 253-1381, john.lamar@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 type="checkbox"/> Not Applicable to this Request | |
| <input checked="" type="checkbox"/> Applicable-- ISP Project# DG309 | |
| Response Confirmed by IT Director/Staff (name): Bill Shanko | |

OIR%20preapproval%20Request%20FINAL.%20to%20OIR_For%20Zylax%20Upgrade_062613[1]

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1 of 2

| |
|---|
| Applicable RFS # 34701-11059 |
| Required Attachments (as applicable – copies without signatures acceptable) <ul style="list-style-type: none"> <input checked="" type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request <input checked="" type="checkbox"/> Original Contract/Grant or Amendment <input 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.) <p>Contractor will provide an upgrade to existing fuel tax software. The new version provides increased functionality for TDOR and taxpayers including on-line capability for taxpayers to enter manual tax data and to submit electronic tax returns, and web-based access for TDOR staff to electronic tax return data. The upgrade is needed to enable auditors in the field to easily access taxpayer information via a web-based system. The new version also will provide taxpayers with on-line capability to enter and submit tax returns directly through a website instead of having to either purchase software or pay a software company for E-filing services. The new version of this fuel tax software will be web-based instead of client-server based. TDOR personnel will access the system via the Internet. User training will be included in the contract to help mitigate any issues with staff using the new version.</p> |

Sourcing Analyst Recommendation

APPROVED

Michael F. Perry
Central Procurement Officer

DATE: Wednesday, July 17, 2013

SUBJECT: Non-Competitive Contract Request – 34701-11059 –
Tennessee Department of Revenue (DOR), Zytax Upgrade Project

I. RECOMMENDATION:

Approve special contract request for a Non-Competitive Contract, 34701-11059 for Zytax Upgrade Project for the Department of Revenue (DOR).

II. ANALYSIS:

The Department of Revenue is requesting to upgrade the Zytax software. Zytax allows taxpayers to file electronically and allow state governments to manage their motor fuel tax requirements. The upgrade allows the system to function as a web-based system with the flexibility to submit tax returns electronically. The new version, upgrade will provide increased functionality for DOR and taxpayers. No other vendors can update this system because of the proprietary functionality of the system. The DOR did consult with another vendor but the cost was 4 times the cost of the upgrade cost.

Tamara Byrd

Tamara Byrd
Sourcing Analyst



CONTRACT

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



| | | | |
|------------------------------|----------------------------|---|----------------------------------|
| Begin Date 10/1/13 | End Date 9/30/16 | Agency Tracking # 34701-11059 | Edison Record ID 38825 |
|------------------------------|----------------------------|---|----------------------------------|

| | |
|--|------------------------------------|
| Contractor Legal Entity Name Zytax, Inc. | Edison Vendor ID 0001400 |
|--|------------------------------------|

Service Caption (one line only)
Motor Fuels EDI Software Upgrade

| | |
|---|---------------|
| Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor | CFDA # |
|---|---------------|

| Funding — | | | | | |
|---------------|-----------------|---------|-------------------|-------|-----------------------|
| FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount |
| 2014 | \$7,000 | | \$94,800 | | \$101,800 |
| 2015 | \$8,000 | | \$142,000 | | \$150,000 |
| 2016 | \$1,000 | | \$34,200 | | \$35,200 |
| | | | | | |
| | | | | | |
| TOTAL: | \$16,000 | | \$271,100 | | \$287,000 |

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. | <i>OCR USE – FA</i> |
| | |

| | |
|--|--|
| Speed Chart (optional) RV0000344 | Account Code (optional) 72203000 |
|--|--|



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE DEPARTMENT OF REVENUE
AND
ZYTAX, INC.**

This Contract, by and between the State of Tennessee, Tennessee Department of Revenue, hereinafter referred to as the "State" and Zytax, Inc., hereinafter referred to as the "Contractor," is for the provision of A Motor Fuels EDI Software Upgrade, as further defined in the "SCOPE OF SERVICES"

The Contractor is a For-Profit Corporation
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 0001400

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. Upgrade the Tennessee Department of Revenue Zytax Government system to the latest version of Zytax Government 5.x. The scope of this effort includes:
- a. Changes to look and feel of application to implement a Tennessee skin on the Zytax Government 5.x application provided for Tennessee
 - b. Design, develop, test and implement six (6) Tennessee EDI returns currently used in Zytax Government 4.x solution. Specific calculation and data validation rules for each schedule and return field will be implemented. Tax returns can be filed via EDI and on-line through manual entry. Support for original, amended and corrected tax returns is provided. The eFile import functionality that supports taxpayer review of EDI files, import warnings, import error messages and allows taxpayers to upload additional EDI files as needed to correct errors is included as part of the support for an EDI tax return.
 - c. Configuration of eFile Transmit / Receive capability that supports automated import of eFile from Zytax 5.x. This capability is utilized to support existing TN Web filers that utilize the Zytax TN Web application and the Zytax 5.x Compliance products.
 - d. Design, develop, test and implement an updated interface from Zytax Government 5.x to Tennessee's back-office accounting system (RITS) for transferring tax return data for original and amended tax returns.
 - e. Design and implement custom roles for Zytax Government 5.x as specified by the Tennessee Department of Revenue.
 - f. Schedule Query Wizard functionality is included as part of Zytax Government 5.x. The Schedule Query Wizard functionality will be covered in the training sessions provided to the Tennessee Department of Revenue
 - g. Design, test and implement Certification system that works in parallel to the Production system to support a certification process for new EDI tax filers in Tennessee.
 - h. Support and assist Tennessee in implementation of a User Acceptance Test process to confirm all application components implemented as part of this effort function as designed.
 - i. Provide training to Tennessee in the form of on-site training conducted over a 3 day period in a training class provided at to the Tennessee Department of Revenue.
 - j. Travel costs for all on-site visits are included in the cost and are described in the Implementation Schedule. Planned visits are included for each phase of the project.
 - k. The following tax returns are included in scope:
 1. PET-350 Distributor Monthly Fuel Tax Return
 2. PET-368 Blender Return
 3. PET-372 Petroleum Products Terminal Return
 4. PET-373 Petroleum Transporter Tax Return
 5. PET-374 Annual Terminal Operator Return
 6. PET-377 Exporter Tax Return



- A.1.b. Design, develop, test and implement custom reports that will report on tax returns and processes in Zytax Government 5.x. The scope of the report additions includes:
- a. Design, develop, test and implement reports that will report on tax returns and processes in Zytax Government 5.x.
 - b. Custom reports will be developed to run as on-demand reports
 - c. Support and assist Tennessee in implementation of a User Acceptance Test process to confirm that reports function as designed.
 - d. Training on new reports will be included as needed in any formal training activities provided
 - e. Reports are classified based on the complexity of development as Easy, Medium or Difficult. Implementation cost is provided by report based upon complexity of report.
 - f. The following two custom reports will be produced for State of Tennessee:
 1. Daily File Activity Report – defined with complexity level of difficult
 2. Monthly Tax Return Status Report – defined with complexity level of medium.

A.1.c. Implement additional non-EDI tax returns. The scope of effort to add the tax return includes:

- a. Design, develop, test and implement new tax return(s) for Tennessee
- b. Support for original and amended returns is included
- c. Support and assist Tennessee in implementation of a User Acceptance Test process to confirm that the tax return(s) function as designed
- d. Training on new tax returns will be included as needed in any formal training activities
- e. Tax returns are provided as a licensed component due to the nature of expected changes in tax returns. Tax returns are subject to legislative changes and can be changed at any point. As a licensed component with specific maintenance provided, the returns will be changed as needed to meet the requirements of Tennessee
- f. The following two new tax returns will be included for the State of Tennessee:
 1. PET-375 Wholesaler Application for Refund
 2. PET-357 Governmental Sales Claim for Refund

A.1.d. The project will be conducted in 4 phases. The criteria for each phase is as follows:

- a. System Definition Phase.

The Define phase will focus on project planning, gathering system requirements and establishing the working relationships that are needed to be efficient during the design phase. A key step in the define phase is the project kick-off meeting. The project kick-off meeting will generally last one day followed by two days of project team review of Zytax Government 5.x and discussion of details needed to begin the design phase. Preliminary planning will begin in earnest prior to the kick-off meeting as detailed project expectations are already defined in this Statement of Work.

Prior to the kick-off on-boarding will occur. During on-boarding, the FuelQuest Project Manager will work with the Department of Revenue's Project to:

- Establish the project management processes and procedures to be observed on this project including change management processes, deliverable acceptance process and monthly status reporting.
- Review governance structure and process.
- On-board the FuelQuest team.

The kick-off will serve as the first meeting for all project stakeholders and project participants. The objectives of this meeting include:

- Introduce the team members
- Review the project scope of work
- Review the project schedule
- Review the project management processes to be observed for:
 - o Change Management



- Deliverable Acceptance
- Status reporting
- Review roles, responsibilities, and expectations

During the Define phase, the project scope will be confirmed and the team will establish the needed working relationships to be efficient during the design phase. Many of the deliverables are defined prior to the define phase. Any adjustments to deliverables previously agreed upon will require utilization of the established change control process. The define phase is projected to last one month.

The following tasks are expected to be completed during this phase:

- Review and finalize Project Management Plan
- Project Kickoff Meeting
- Review project schedule
- Sample Return Design Review
- Proposed Roles Review
- Review Training Requirements
- Technical Architecture Review
- Provide an overview of Zytax Government 5.x
- Review requirements for design phase

The following deliverables are included in this phase:

- Phase completion criteria
- Training requirements
- Team roles & responsibilities
- Specifications for design phase deliverables

During this phase, the FuelQuest project team will begin reviewing the details needed from the Tennessee Department of Revenue so that design phase deliverables can be completed. The following items must be provided by Tennessee by the conclusion of the define phase:

- Electronic copy of all Schedule and Tax Returns in PDF format
- RITS Interface Specifications

During the define phase FuelQuest will review template designs and application examples that relate to several Design Phase deliverables. For the following deliverables that are in this category Tennessee will not need to provide documentation during the define phase:

- Schedule and Tax Returns
- Report Inventory
- Roles and Security
- Web-Site Look and Feel

Tennessee will confirm that the EDI Implementation Guide does not require any changes. If changes are needed, they will be made by Tennessee during the Define phase of the project. This deliverable is required for FuelQuest to complete several deliverables in the design phase.

The Tennessee project manager will be responsible for confirming the project management processes and securing approval of FuelQuest and Tennessee. The Tennessee project manager will serve as a champion for the project in following the documented project processes throughout the term of this Statement of Work.

During the Define phase, the FuelQuest project team will be on site in Nashville, TN for a single visit of three (3) days. Three FuelQuest team members will participate in this visit to participate in project kickoff and define phase meetings.



b. System Design Phase

This phase will focus on the functional designs for all reports, interfaces, tax returns and EDI (eFile) tax returns. The project team will focus on process changes required for the new system, including the design of any new forms and revisions to existing forms. The technical architecture will be finalized during this phase so that any hardware and software can be configured to support future phases. The Zytax Government 5.x application will be installed in a test environment so that Tennessee has access to the application during this phase. A communication plan will be established for rolling out the application to internal and external users. This phase is projected to last four to six (4 – 6) months.

This phase contains the most deliverables of all the project phases. Completing the designs and obtaining sign-off will be critical to keeping the project on track. A key element of risk during this phase will be reviewing the designs for all of the tax returns and completing the interface design. The duration of this project phase may be impacted by these critical tasks.

The following tasks are expected to be completed during this phase:

- Design returns, interfaces and reports
- Install Zytax Government 5.x in Test Environment
- Review user acceptance testing process
- Validate stakeholder communications
- Complete and review all designs

The following deliverables are included in this phase:

- Technical Architecture Design
- Security Roles Design
- Interface Design
- Web-Site Look and Feel
- EDI Implementation Guide
- Tax Return Designs
- Reports Design
- eFile Design
- Training Approach Design
- Communication Plan

For each deliverable FuelQuest will schedule meetings with appropriate Tennessee personnel to collaboratively define the requirements. FuelQuest will seek further clarification on items as needed while completing the design documentation.

The EDI Implementation Guide must be provided by Tennessee within the first month of the design phase. The EDI Implementation Guide will serve as the basis for the eFile design that supports all Tennessee EDI tax returns. The EDI Implementation Guide will also be used to complete the Tax Return designs. The effort to complete the EDI Implementation Guide should be started prior to the project kickoff so that this deliverable will not impact FuelQuest deliverables required during the design phase.

The Communication Plan and all user acceptance planning will be completed by Tennessee. The possible technical architectures that can be used to deploy Zytax Government 5.x will be provided by FuelQuest, but the final Technical Architecture Design will be completed by Tennessee and will be subject to FuelQuest approval. All other deliverables will be completed by FuelQuest. Extensive input from Tennessee will be required during the completion of the designs. Multiple on-site visits will be required to complete and review the designs during this phase. Final sign-off by Tennessee is required for all designs.

During the Design phase, the FuelQuest project team will be on site in Nashville, TN for two (2) visits of three (3) days each. Three FuelQuest team members will



participate in these visits as the meetings will be used to facilitate design creation and design review tasks.

c. System Development Phase

During the Develop phase FuelQuest is focused on configuring and building the application to meet the specifications defined in the design phase. Development will be performed within the FuelQuest environment with software releases delivered to Tennessee as the system components are ready for release. During the development process, FuelQuest will conduct unit and system tests prior to releasing the software to the project team.

During the development phase FuelQuest will develop training materials while Tennessee will begin executing the communication plan and will also build test scripts to be used in UAT. Preparation for User Acceptance Testing will require a large effort on the part of Tennessee. This activity will consume most of the time of this phase.

At the end of the develop phase, FuelQuest will conduct training with the Tennessee staff. A train the trainer approach is utilized as training is conducted in a class format with ten to twelve (10-12) participants. The training will be designed to support the types of users that will use the system and will allow different groups to attend different sessions as needed. While technical training is included, the majority of technical training that the IT staff will receive will be done in a hands-on mode while FuelQuest assists and provides guidance in the installation of the software in the technical environments.

This develop phase is projected to last four to six (4 – 6) months.

The Development Phase is focused on building the components designed in the Design Phase. During this phase technical environment issues will be worked through as preparations are put in place to conduct training, and begin user acceptance testing.

The following tasks are expected to be completed during this phase:

- Complete Development of Returns, Interfaces and Reports
- Configure software
- Create training materials
- Create test plans
- Conduct training sessions
- Execute key steps in communication plan
- Completion of Tennessee Skin
- Development of Security Roles

The following key deliverables will be completed during this phase:

- Zytax 5.x Install Guide
- Zytax 5.x Operations Guide
- Software releases with designed content
- Technical Infrastructure
- Training Materials
- Updated Zytax 5.x User Guide
- UAT Test Plan
- UAT Test Scripts
- Working system for UAT

The UAT Test Plan and UAT Test Scripts will be completed by Tennessee. The technical infrastructure will be provided by Tennessee. The technical infrastructure will be configured by Tennessee and the software will be installed by Tennessee.



FuelQuest will serve as an advisor for the technical infrastructure configuration, software installation, and assist with troubleshooting and resolving installation and configuration problems associated with Zytax Government 5.x.

All other deliverables will be completed by FuelQuest.

During the Development phase, the FuelQuest project team will be on site in Nashville, TN for three (3) visits of three (3) days each. One of the meetings will be used to complete technical infrastructure configuration and two FuelQuest team members will attend. The additional visits will be used to conduct training and three FuelQuest team members will participate.

d System Deploy Phase

Upon completion of all internal testing and training of Tennessee staff in the Develop phase, the Deploy phase will begin with the User Acceptance Testing (UAT). During this testing phase, any software defects found will be documented, tracked, fixed, and retested until all major (critical) defects are resolved.

FuelQuest will provide a web-based tracking system to track defects found during the integration test and UAT. This system will allow Tennessee to directly report defects and will allow the status of all defects to be reviewed as needed by all FuelQuest and Tennessee project team members.

FuelQuest will prepare the defect log based on the documented defects from Tennessee staff. FuelQuest, in conjunction with Tennessee, will prioritize the errors found into two categories:

- **Defect:** A defect occurs when the Zytax Government software does not function correctly as defined by the expected processing response of the system. Examples of defects include a test case that does not meet the expected results as described in the functional design, a function that does not work as designed, a calculation error in a tax report or other defect where the system does not function properly.
- **Enhancement:** An enhancement is an issue that will require a new or improved feature in Zytax that will allow the system to provide additional functionality that is not covered by the contract and is not specified in a functional design. Defects determined to be an enhancement will be managed through the project's change control process if its resolution is deemed necessary.

Defects will be assigned a priority as follows:

- **Critical:** A critical defect represents a significant system function that does not operate properly and there is not a workaround. A critical defect is assigned when a function prevents critical functionality from operating properly and must be repaired as soon as possible. Examples of a critical defect would be:
 - Interface does not provide data
 - Tax return cannot be filed
 - Tax return cannot be displayed
 - Report does not execute
 - System error prevents system from functioning
- **High:** A high defect represents a significant error for which there is a possible workaround. Defects with this priority can be combined with other defect repairs for a new test build.
- **Medium:** A medium defect represents a minor error that can be fixed after Go-Live. A medium defect would have no impact on tax filing. FuelQuest and Tennessee will agree upon a scheduled release for providing the resolution to medium priority-defects.



- Low: A low defect is an issue of a cosmetic nature and does not affect system processing. FuelQuest and Tennessee will agree upon a scheduled release for providing the resolution to low priority defects.

FuelQuest will resolve all Critical and High defects documented in the User Acceptance Test Exception Report as part of the criteria for completing user acceptance testing. Medium defects, especially those that will be taxpayer facing, will be evaluated to determine whether resolution is a criteria for completing user acceptance testing. Medium and low issues not required for production will be resolved in a scheduled release agreed upon by FuelQuest and Tennessee. FuelQuest will iterate the activities in the UAT until the UAT test cycles have been completed and the defects have been resolved per the guidelines in this Statement of Work. Upon successful completion of user acceptance testing, Tennessee will accept the Zytax Government software.

After UAT is concluded, the final steps in the communication plan will be executed to notify all users of the Go-Live date and all needed procedures to be followed.

Following Go-Live, the FuelQuest project team will provide support in conjunction with the FuelQuest support team. After thirty (30) days support will be fully transitioned to FuelQuest support. The resolution of all defects found after Go-Live will be subject to the software license agreement.

User acceptance testing is expected to last two (2) months followed by one (1) month of final activities in the deploy phase. Post Go-Live support is expected to last one (1) month for a total length of four (4) months for the deploy phase. Completing UAT as scheduled is the key area of risk for keeping the project on schedule during this phase.

The following tasks are expected to be completed during this phase:

- Execute user acceptance testing
- Update software to correct UAT issues
- Configure production system
- Execute final steps in communication plan

The following key deliverables will be completed during this phase:

- User Acceptance Test Support / Defect Log
- Final software build
- Production system

The User Acceptance Test will be executed by Tennessee with extensive support from FuelQuest. The Production System is the key deliverable for Tennessee in the Deploy phase. FuelQuest will be on-site for portions of UAT and will assist in configuring the production environment as needed. Final sign-off by Tennessee is required to conclude UAT and establish Go-Live.

During the Deploy phase, the FuelQuest project team will be on site in Nashville, TN for three visits of three (3) days each. Two FuelQuest team members will attend two different sessions that will be used to review User Acceptance Testing activities and assist in any testing or training activities required to help the UAT team be efficient and make progress. The final visit will consist of a single FuelQuest team member and will be used to support Go-Live during the first week of filing using Zytax 5.x.

A.2. Change Orders. Payments for approved change orders will be authorized to a cumulative cost not to exceed \$35,000.00.



A.2.a. The State may at any time, with written notice to the Contractor, make changes within the general scope of the Contract. Such changes may include modification in the functional requirements and processing procedures. Other changes might involve the correction of system deficiencies after the Contractor has commenced delivery of services, or other changes specifically required by new or amended Federal or State laws and regulations. Any correction of system deficiencies relating to requirements outlined in the Scope of Services and any investigation necessary to determine the source of the problem, are the Contractor's responsibility to make without charge to the State.

A.2.b. The written change order issued by the State shall specify whether the change is to be made on a certain date or placed into effect only after approval of the Contractor costs statement as described in the following paragraph.

A.2.c. As soon as possible after receipt of a written change order, but in no event more than fifteen (15) calendar days thereafter, the Contractor shall provide the State with a written statement regarding the schedule and cost impact of the change. If the change decreases the scope of the Contractor's responsibilities, the estimate will be a fixed amount that will reduce the State's compensation to the Contractor under this Contract. If the change increases the scope of the Contractor's responsibilities, an estimate of the tasks, time and cost required to complete the change will be documented by the Contractor. This estimate will provide at a minimum the tasks to be performed and the projected cost of the change. The State must then grant approval for the Contractor to proceed with the change.

A.2.d. Invoices for change orders may be submitted upon signed acceptance of the change. Notification of acceptance and the signed change order cost statement must accompany all invoices.

A.3. The State agrees to perform the following services:

A.3.a. Provide approval of, or reasonably withhold approval of, any deliverable which requires the approval of the State.

A.3.b. Provide TDOR Project Manager.

A.3.c. Provide hardware and associated system software that will serve as the platform for the Zytax Government 5.x product.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning October 1, 2013, and ending on September 30, 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.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two hundred and eighty-seven thousand dollars (\$287,000). 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) |
|---------------------------------|---------------------------------------|
| Completion of Define Phase | \$46,400.00 |
| Completion of Design Phase | \$46,400.00 |
| Completion of Development Phase | \$46,400.00 |
| Completion of Deployment Phase | \$112,800.00 |
| Change Order | \$35,000.00 |

- 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:

Ray Grigsby, Audit Manager
Tennessee Department of Revenue – Audit Division
500 Deaderick Street
12th Floor –Andrew Jackson State Office Building
Nashville, TN 37242

- 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: Tennessee 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.
- 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:

Ray Grigsby, Audit Manager
 Tennessee Department of Revenue – Audit Division
 500 Deaderick Street
 12th Floor – Andrew Jackson State Office Building
 Nashville, TN 37242
 ray.grigsby@tn.gov
 Telephone # 615-532-6914
 FAX: 615-741-5319

The Contractor:

DONNA BURDETTE
 Sr. Account Executive-Southeast Region
 FuelQuest, Inc.
 9 Greenway Plaza, Ste 1800
 Houston TX 77046
 dburdette@FuelQuest.com
 Telephone # 678-557-4884
 FAX: 713-222-5701

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. § 67-1-1701, et seq., 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 § 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.7. Copyrights and Patents. 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 or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees 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. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

IN WITNESS WHEREOF,

ZYTAX, INC.:

8.27.13

CONTRACTOR SIGNATURE

DATE



ALLISON DVENSING CHIEF COUNSEL

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF REVENUE:

Richard H. Roberts

9/3/2013

RICHARD H. ROBERTS, COMMISSIONER

DATE



ATTACHMENT ONE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|--|-------------|
| SUBJECT CONTRACT NUMBER: | 34701-11059 |
| CONTRACTOR LEGAL ENTITY NAME: | Zytx, Inc. |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number) | 16-0684579 |

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.

Matthew Tornollen

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

MATTHEW TORNOLLEN, PRESIDENT

PRINTED NAME AND TITLE OF SIGNATORY

8.27.13

DATE OF ATTESTATION