

**CONTRACT #2**  
**RFS # 401.00-16514**  
**ED # 14-36162**  
**Edison # 36162**

**Department of Transportation**

**VENDOR:**  
**University of Tennessee**



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**COMMISSIONER'S OFFICE**  
SUITE 700, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-2848

**JOHN C. SCHROER**  
COMMISSIONER

**BILL HASLAM**  
GOVERNOR

April 4, 2013

Leni Chick, Contract and Audit Coordinator,  
Fiscal Review Committee  
8th Floor, Rachel Jackson Bldg.  
320 Sixth Avenue North  
Nashville, TN 37243

RE: Graduate Degree courses via distance learning  
For Civil and Environmental Engineering  
University of Tennessee Contract

Ms. Chick,

The referenced contract provides for the Graduate Degree courses via distance learning for the Tennessee Department of Transportation. The Contractor was selected through the Non-Competitive process as there is no other state university that offers an online graduate degree program with the courses needed by the Department. This will be a new five year contract and will enable the Department of Transportation to remain in federal compliance and increase productivity as projects can be validated according to federal guidelines.

This package contains the following materials as required by your office:

1. Supplement Documentation form required by the Fiscal Review Committee.
2. Copy of the Special Contract Request requesting approval for a Non-Competitive contract.
3. Copy of the Department of Human Resource approval.
4. Copy of the proposed contract with the University of Tennessee.

Please advise if you have any questions or comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "John C. Schroer", written over a horizontal line.

John C. Schroer  
Commissioner

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Victoria Hassinger	*Contact Phone:	615-532-3508		
*Original Contract Number:	ED1436162	*Original RFS Number:			
Edison Contract Number: <i>(if applicable)</i>	36162	Edison RFS Number: <i>(if applicable)</i>	40100-16514		
*Original Contract Begin Date:	7/1/13	*Current End Date:	6/30/18		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Department of Transportation				
*Division:	Human Resource				
*Date Submitted:	4/15/13				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	University of Tennessee				
*Current Maximum Liability:	750,000.00				
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY: 2018	
\$150,000.00	\$ 150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract Funding	State:	750,000.00	Federal:		

# Special Contract Request

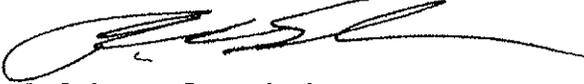
NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.  
Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED

Chief Procurement Officer

Request Tracking #	40100-16514
1. Contracting Agency	Department of Transportation
2. Type of Contract	<input checked="" type="checkbox"/> Non-Competitive <input type="checkbox"/> No Cost <input type="checkbox"/> Revenue
3. Requestor Contact Information	Kenneth Williams, TDOT HR Suite 400, Polk Building Nashville, TN 37243 615-532-3812
4. Date Requested	April 2, 2013
5. Brief Service Caption	Provide Graduate Degree Courses via Distance Learning in Civil and Environmental Engineering
6. Proposed Contractor	University of Tennessee
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>	60 months
8. Maximum Contract Cost – with ALL options to extend exercised	\$ 750,000.00
9. Office for Information Resources Endorsement <i>– information technology (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input 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 type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
12. Has the contracting agency procured the subject service before?  <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Non-Competitive Negotiation <input type="checkbox"/> Another Competitive Method	

Request Tracking #	40100-16514
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: Distance Learning Master's Degree in courses in Civil Engineering and Environmental Engineering. To obtain real time format via connection through computers to the internet from University of Tennessee Knoxville classrooms.	
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. Contract ends June 30, 2013	
17. Summary of State Responsibilities Under Proposed Contract (For No Cost and Revenue Contracts <u>only</u> )	
18. Explanation of Need for or Requirement Placed on the State to Acquire the Service: The Department of Transportation is composed of a large number of Civil Engineers. To ensure effective and efficient use of these resources and assign them to projects on a more advanced level, we have determined that Civil Engineers with a Master's Degree would be able to easily accomplish these more sophisticated level duties. The Professional Engineering License (PE) is essential and critical to the department because Federal laws dictate that only an licensed engineer with a PE will be able to validate certain documents for projects.	
19. Proposed Contract Impact on Current State Operations – It will keep TDOT in Federal compliance and increase productivity as projects can be validated according to federal guidelines. The University of Tennessee is the only state university that provides online classes in these fields.	
20. Justification – Specifically explain why the procurement method being requested is required.	
21. Contractor Selection Process and Efforts to Identify Reasonable, Competitive, Procurement Alternatives: Other State Universities do offer Masters Degrees, but none of them have the capability to do it online in Civil Engineering. The courses were identified by our Executives in conjunction with the University of Tennessee Research staff and Transportation Center staff engineers. In addition, T.C.A. 54-1-118 states: The Commissioner (of Transportation) is hereby authorized and empowered to enter into a contract or contracts with the University of Tennessee relative to the development and testing of new materials to be used in constructing and maintaining roads, bridges, and highways, relative to the development of more economical methods of designing, constructing and maintaining roads, bridges, and highways and relative to the training of personnel in the fundamentals of highway engineering. After the law was written, the Research Center was established at UT and when our research projects meet one of the aforementioned criteria's, we contract with UT.	
22. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution	
23. Evidence of Contractor's Experience & Length Of Experience Providing the Service: The University of Tennessee has a Civil Engineering Department that focuses on the needs of transportation engineering. The distance learning program has developed the technology that allows the students to be in real time classroom.	
24. Was there an initial government estimate?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
25. Cost Determination Used- How did agency arrive at the price? Prices were estimated using historical tuition costs combined with average tuition increases over the past 10 years.	

Request Tracking #	40100-16514
<p><b>26. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? The hourly price listed in the contract coincides with the University of Tennessee's distance education tuition prices for a graduate degree.</p>	
<p><b>27. Explanation of Fair and Reasonable Price-</b> Explain why price is fair and reasonable under the circumstances. The hourly price listed in the contract coincides with the University of Tennessee's distance education tuition prices for a graduate degree.</p>	
<p><b>Agency Head Signature and Date -</b> <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> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div data-bbox="250 520 834 604" style="text-align: center;">  </div> <div data-bbox="1078 527 1256 562" style="text-align: center;"> <p>APR 03 2013</p> </div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 10px;"> <div data-bbox="190 600 623 630" style="text-align: center;"> <p><b>John C. Schroer, Commissioner</b></p> </div> <div data-bbox="1154 600 1230 630" style="text-align: center;"> <p><b>DATE</b></p> </div> </div>	



## HR Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** Brigitte Tubbs-Jones, HR Special Counsel  
Department of Human Resources  
E-mail : [Brigitte.Tubbs-Jones@tn.gov](mailto:Brigitte.Tubbs-Jones@tn.gov)

**FROM :** Victoria Hassinger  
E-mail : [Victoria.hassinger@tn.gov](mailto:Victoria.hassinger@tn.gov)

**DATE :** ~~March 25, 2013~~ **April 2, 2013**

**RE :** Request for Human Resources Pre-Approval Endorsement

Applicable RFS # 40100-16514

Human Resources Endorsement Signature & Date:

*Brigitte Tubbs-Jones* 4/10/13  
Department of Human Resources

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

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

<b>Contracting Agency</b>	<b>Department of Transportation, Human Resource Division</b>
<b>Agency Contact (name, phone, e-mail)</b>	<b>Kenneth Williams, 615-532-3812, Kenneth.D.Williams@tn.gov</b>
<b>Required Attachments (as applicable – copies without signatures acceptable)</b>	
<input type="checkbox"/> RFP <input type="checkbox"/> Competitive Negotiation Request <input type="checkbox"/> Alternative Procurement Method Request <input checked="" type="checkbox"/> Non-Competitive Contract/Amendment Request	
<b>Service Description</b>	
Provide Graduate Degree Courses via Distance Learning in Civil and Environmental Engineering	

DRAFT



# CONTRACT

(fee-for-service contract with the University of Tennessee or a Board of Regents college or university)

<b>Begin Date</b> 7/1/13	<b>End Date</b> 6/30/18	<b>Agency Tracking #</b> 40100-16514	<b>Edison Record ID</b> 36162
<b>Contractor Legal Entity Name</b> University of Tennessee			<b>Edison Vendor ID</b> 2802
<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		<b>CFDA #</b> N/A	
<b>Service Caption (one line only)</b> Provide Graduate Degree Courses via distance learning in Civil and Environmental Engineering			
<b>Funding —</b>			
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>
2014	\$750,000.00		
<b>TOTAL:</b>	<b>\$750,000.00</b>		
			<b>\$750,000.00</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
<b>Selection Method &amp; Process Summary (mark the correct response to confirm the associated summary)</b>			
<input type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.	
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.	
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.	
<input checked="" type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.	
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."	
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.		<i>OCR USE - ED</i>	
<b>Speed Chart (optional)</b>	<b>Account Code (optional)</b>		

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF TRANSPORTATION  
AND  
UNIVERSITY OF TENNESSEE**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and University of Tennessee, hereinafter referred to as the "Contractor," is for the provision of providing Graduate Degree Courses via distance learning, as further defined in the "SCOPE OF SERVICES."

Contractor Edison Registration ID # 2802

**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.#. A.2. The Contractor shall provide Graduate degree courses via distance learning to personnel of the State. These courses shall be provided by the Civil and Environmental Engineering Department. Required courses are described in Exhibit A.
- A.3. The Contractor agrees to conduct the technical courses. Course offerings will be a minimum of once every three years; dates and time will be at the Contractor's discretion. Class titles to be required include, but are not limited to, the following areas:
- CE 521 Pavement Design
  - CE 530 Advance Soil Mechanics and Slope Stability
  - CE 531 Soil Stabilization
  - CE 541 Construction Management 2
  - CE 552 Traffic Engineering – Operations (3)
  - CE 561 Finite Elements Applications in Structural Engineering
  - CE 565 Structural Dynamics
  - CE 571 Behavior of Steel Structures
  - CE 573 Pre-stressed Concrete
  - CE 524 Sediment Transport
  - CE 530 Urban Hydrology and Storm-water Engineering
- A.4. The Contractor agrees to offer the following core classes a minimum of once every two years. Dates and times will be at the Contractor's discretion.
- CE 540 Construction Management 1
  - CE 574 Behavior of Reinforced Concrete Members
  - CE 522 Asphalt Concrete Mix Design
  - CE 553 Geometric Design and Layout of Roadways and Community Facilities (3)
  - CE 452/551 Traffic Engineering – Characteristics (3) Driver-Vehicle-Roadway
  - EV 525 Soil Erosion and Sediment Control
- A.5. The Contractor will provide the State's participants access to classrooms via distance learning systems. The Office of University Outreach and Continuing Education will provide access to twenty-five students (or more at the discretion of the Contractor) in real time internet connection to each class. Access to all State personnel and or their representatives will be an ongoing responsibility of the Contractor.
- A.6. The Contractor will provide each of the State's participants their final class grades in a timely manner not to exceed two weeks of the final class date.

A.7. The Contractor will not penalize the State's participants for the Contractor's or State's failure to resolve billing issues in a timely manner with holds on registration for upcoming semester enrollments or graduation from this program.

**B. CONTRACT PERIOD:**

This Contract shall be effective for the period beginning July 2, 2013 and ending on June 30, 2018. 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 Seven hundred fifty thousand dollars and no cents (\$750,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

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

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Per Student Per Class Per Semester	Rate of Tuition however, not to exceed \$2,200.00

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:

Tennessee Department of Transportation  
 505 Deaderick Street  
 James K. Polk Building, Suite 400

Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
  - (2) Invoice Date
  - (3) Contract Number (assigned by the State)
  - (4) Customer Account Name: Department of Tennessee, Human Resource 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. Pursuant to *Tennessee Code Annotated*, Section 9-4-604, the State may not issue warrants for payments to persons who are in default to the State until such arrearages are paid. If applicable to the Contractor, the Contractor agrees that, should such an arrearage exist during the term of this Contract, the State shall have the right to deduct from payments due and owing to the Contractor any and all amounts as are necessary to satisfy the arrearage. Should a dispute arise concerning payments due and owing to the Contractor under this Contract, the State reserves the right to withhold said disputed amounts pending final resolution of the dispute.

**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. Any liability of the Contractor to the State and third parties for any claims, losses, or costs arising out of or related to acts performed by the Contractor under this agreement shall be governed by the Tennessee Claims Commission Act, *Tennessee Code Annotated*, Section 9-8-301, *et seq.*
- 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 "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. 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.7. 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.8. 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.9. 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.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. 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.12. 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 a 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.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. 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.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. 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.17. 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:

Tennessee Department of Transportation  
 Kenneth D. Williams  
 505 Deaderick Street  
 James K. Polk Building, Suite 400  
 Nashville, TN 37243

Kenneth.D.Williams@tn.gov  
Telephone # 615-532-3812

The Contractor:

University of Tennessee  
Civil and Environmental Engineering Department  
223 Perkins Hall  
Knoxville, TN 37996-2010  
Email Address  
Telephone # Number  
FAX # Number

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.

Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. below);
- b. The University of Tennessee Graduate Course Catalog

**IN WITNESS WHEREOF,**

**UNIVERSITY OF TENNESSEE:**

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**CONTRACTOR SIGNATURE**

**DATE**

---

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

**TENNESSEE DEPARTMENT OF TRANSPORTATION:**

---

JOHN C. SCHROER, COMMISSIONER

DATE

---

JOHN H. REINBOLD, GENERAL COUNSEL  
APPROVED AS TO FORM AND LEGALITY

DATE

Supplemental Documentation Required for  
Fiscal Review Committee

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

# Special Contract Request

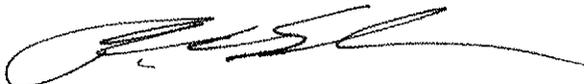
NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.  
Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

**APPROVED**

Chief Procurement Officer

Request Tracking #	40100-16514
1. Contracting Agency	Department of Transportation
2. Type of Contract	<input checked="" type="checkbox"/> Non-Competitive <input type="checkbox"/> No Cost <input type="checkbox"/> Revenue
3. Requestor Contact Information	Kenneth Williams, TDOT HR Suite 400, Polk Building Nashville, TN 37243 615-532-3812
4. Date Requested	April 2, 2013
5. Brief Service Caption	Provide Graduate Degree Courses via Distance Learning in Civil and Environmental Engineering
6. Proposed Contractor	University of Tennessee
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>	60 months
8. Maximum Contract Cost – with ALL options to extend exercised	\$ 750,000.00
9. Office for Information Resources Endorsement <i>– information technology (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input 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 type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
<b>12. Has the contracting agency procured the subject service before?</b>  <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Non-Competitive Negotiation <input type="checkbox"/> Another Competitive Method	

Request Tracking #	40100-16514
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: Distance Learning Master's Degree in courses in Civil Engineering and Environmental Engineering. To obtain real time format via connection through computers to the internet from University of Tennessee Knoxville classrooms.	
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. Contract ends June 30, 2013	
17. Summary of State Responsibilities Under Proposed Contract (For No Cost and Revenue Contracts <u>only</u> )	
18. Explanation of Need for or Requirement Placed on the State to Acquire the Service: The Department of Transportation is composed of a large number of Civil Engineers. To ensure effective and efficient use of these resources and assign them to projects on a more advanced level, we have determined that Civil Engineers with a Master's Degree would be able to easily accomplish these more sophisticated level duties. The Professional Engineering License (PE) is essential and critical to the department because Federal laws dictate that only an licensed engineer with a PE will be able to validate certain documents for projects.	
19. Proposed Contract Impact on Current State Operations – It will keep TDOT in Federal compliance and increase productivity as projects can be validated according to federal guidelines. The University of Tennessee is the only state university that provides online classes in these fields.	
20. Justification – Specifically explain why the procurement method being requested is required.	
21. Contractor Selection Process and Efforts to Identify Reasonable, Competitive, Procurement Alternatives: Other State Universities do not offer Masters Degrees, none of them have the capability to enable our personnel to enroll in real time classroom course environment. The courses were identified by our Executives in conjunction with the University of Tennessee Research staff and Transportation Center staff engineers. In addition, T.C.A. 54-1-118 states: The Commissioner (of Transportation) is hereby authorized and empowered to enter into a contract or contracts with the University of Tennessee relative to the development and testing of new materials to be used in constructing and maintaining roads, bridges, and highways, relative to the development of more economical methods of designing, constructing and maintaining roads, bridges, and highways and relative to the training of personnel in the fundamentals of highway engineering. After the law was written, the Research Center was established at UT and when our research projects meet one of the aforementioned criteria's, we contract with UT.	
22. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution	
23. Evidence of Contractor's Experience & Length Of Experience Providing the Service: The University of Tennessee has a Civil Engineering Department that focuses on the needs of transportation engineering. The distance learning program has developed the technology that allows the students to be in real time classroom.	
24. Was there an initial government estimate?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
25. Cost Determination Used- How did agency arrive at the price? Prices were estimated using historical tuition costs combined with average tuition increases over the past 10 years.	

Request Tracking #	40100-16514
<b>26. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? The hourly price listed in the contract coincides with the University of Tennessee's distance education tuition prices for a graduate degree.	
<b>27. Explanation of Fair and Reasonable Price-</b> Explain why price is fair and reasonable under the circumstances. The hourly price listed in the contract coincides with the University of Tennessee's distance education tuition prices for a graduate degree.	
<b>Agency Head Signature and Date - 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.</b>  John C. Schroer, Commissioner APR 03 2013 DATE	