

**CONTRACT #13**  
**RFS # 317.01-03113**  
**Edison # 27225**

**Department of Finance and  
Administration  
Office for Information  
Resources (OIR)**

**VENDOR:**  
**SAS Institute, Inc.**



**STATE OF TENNESSEE**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**OFFICE FOR INFORMATION RESOURCES**  
**901 5<sup>th</sup> AVENUE NORTH**  
**NASHVILLE, TENNESSEE 37243**  
**(615) 532-4716**  
**FAX (615) 253-1433**

**LARRY B. MARTIN**  
**COMMISSIONER**

**MARK BENDEL**  
**CHIEF INFORMATION OFFICER**

April 21, 2015

Chairman Mark White  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Bldg.  
Nashville, TN

Attn: Mrs. Leni Chick

Dear Chairman White:

Please find attached, for the Fiscal Review Committee's consideration, documentation of an Amendment request pertaining to the State's contract with SAS Institute, for the provision of maintenance of software licenses. The Department of Finance and Administration respectfully requests to be placed on the agenda to present this request at the next Fiscal Review Committee meeting.

The current contract with SAS Institute for these services expires on June 30, 2015. The amendment in question extends the contract term for seven years to June 30, 2022. The reason for the seven year extension is to align the SAS Institute Contract End Date with the End Date of the Mainframe Services Contract, Edison ID 42526.

After being awarded a contract (Edison ID 42526) to provide mainframe services, the winning vendor, International Business Machines Corporation (IBM), was to assume responsibility for all Third-Party Vendor hardware and software licenses when allowed by the Third-Party Vendor. SAS Institute is a Third-Party Software Vendor that is requiring the State to retain the software licenses. Therefore, the State must retain this contract with SAS Institute for the term of the Mainframe Services Contract.

No additional dollars are needed for this extension as IBM will make payments directly to SAS Institute for the maintenance on the mainframe software.

Thank you for your consideration of this request. We look forward to appearing before the Committee at its next scheduled meeting.

Sincerely,

Lee Gregory,  
Chief Operating Officer

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Kim Wright	*Contact Phone:	615-741-7870		
*Presenter's name(s):	Ron Grove and Joe Huertas				
Edison Contract Number: <i>(if applicable)</i>	27225	RFS Number: <i>(if applicable)</i>	31701-03113		
*Original or Proposed Contract Begin Date:	July 1, 2011	*Current or Proposed End Date:	June 30, 2015		
Current Request Amendment Number: <i>(if applicable)</i>	2				
Proposed Amendment Effective Date: <i>(if applicable)</i>	July 1, 2015				
*Department Submitting:	Department of Finance and Administration				
*Division:	Office for Information Resources				
*Date Submitted:	April 21, 2015				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	SAS Institute				
*Current or Proposed Maximum Liability:	\$760,958.00				
*Estimated Total Spend for Commodities:					
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:2012	FY:2013	FY:2014	FY:2015	FY2016	FY2017
\$166,770	\$180,794	\$197,832	\$215,562	\$0.00	\$0.00

<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:2018	FY:2019	FY:2020	FY:2021	FY2022	FY
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$

<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:2012	FY:2013	FY:2014	FY:2015	FY	FY
\$347,564	\$197,832	\$0.00**	\$215,562	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			** The Yearly Maintenance Term Fees are paid prior to the start of the Fiscal Year so FY2014 was paid in FY2013.		
<b>IF</b> surplus funds have been carried forward, please give the reasons			NA		

Supplemental Documentation Required for  
Fiscal Review Committee

and provide the authority for the carry forward provision:			
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		The Yearly Maintenance Term Fee is paid prior to the beginning of the applicable yearly term. This contract began in July 2011 so the Maintenance Term Fee for both FY2012 and FY2013 were paid in FY 2012.	
<b>*Contract Funding Source/Amount:</b>			
State:		Federal:	
<i>Interdepartmental:</i>	\$760,958.00	<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:		OIR charges State agencies for various information technology services.	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Amendment #1, August 2014		To allow IBM to use contract.	
Method of Original Award: <i>(if applicable)</i>		ITB	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		Cost was determined by vendor bid. \$760,958.00	
*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 reason this contract was sole source is that SAS software is a state standard and to purchase licensing, maintenance, and support they are only available from SAS Institute.	





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

**TO :** Jane Chittenden, OIR Contracts  
Department of Finance & Administration  
E-mail : [Jane.Chittenden@tn.gov](mailto:Jane.Chittenden@tn.gov)

**FROM :** Jane Chittenden  
E-mail : [Jane.Chittenden@tn.gov](mailto:Jane.Chittenden@tn.gov)

**DATE :** 10/13/2014

**RE :** Request for OIR Pre-Approval Endorsement

**Applicable RFS #** 31701-03113

**OIR Endorsement Signature & Date:**

*Mark Bengel (cgs)*  
**Chief Information Officer**

10/13/14

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

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.

<b>Contracting Agency</b>	<b>F&amp;A</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Jane Chittenden 741-1624</b>
<p><b>Attachments Supporting Request</b> (mark all applicable)</p> <p>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.</p> <p><input type="checkbox"/> Solicitation Document</p> <p><input type="checkbox"/> Special Contract Request</p> <p><input checked="" type="checkbox"/> Amendment Request</p> <p><input type="checkbox"/> Proposed Contract/Grant or Amendment</p> <p><input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any)</p>	
<b>Information Systems Plan (ISP) Project Applicability</b>	

**Applicable RFS # 31701-03113**

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): Jane Chittenden

Applicable – Approved ISP Project#

Not Applicable

**Subject Information Technology Service Description**

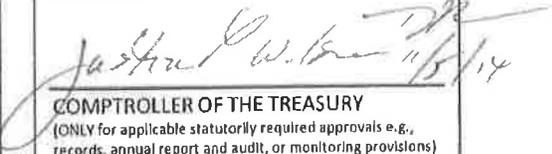
Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, *etc.* As applicable, identify the contract or solicitation sections related to the IT services.

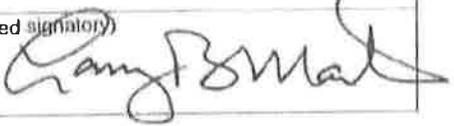
**The State must retain a contract with SAS Institute for the term of the Mainframe Services Contract with IBM.**

# Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: [AgSDrs.AgsDrs@tn.gov](mailto:AgSDrs.AgsDrs@tn.gov)

**APPROVED**  
  
 CHIEF PROCUREMENT OFFICER  
 (Required for all Rule Exception Requests)

**APPROVED**  
  
 COMPTROLLER OF THE TREASURY  
 (ONLY for applicable statutorily required approvals e.g., records, annual report and audit, or monitoring provisions)

<b>Request Tracking #</b>	31701-03113
<b>1. Contract #</b>	27225
<b>2. Goods or Services Caption</b>	SAS Institute Mainframe Software
<b>3. Contractor</b>	SAS Institute
<b>4. Contract Period (with ALL options to extend exercised)</b>	132 months
<b>5. Contract Maximum Liability (with ALL options to extend exercised)</b>	\$760,958.00
<b>6. Rule(s) (for which the exception is requested)</b> Please include citation and written explanation of Rule(s) to be excepted.	12-3-305.(c)(3) No contract may be let for periods of time in excess of sixty (60) months, unless the chief procurement officer determines the contract is in the best interest of the state and approves the contract in accordance with rules and regulations, and policies and procedures approved by the procurement commission, as being in the best interest of the state.
<b>7. Explanation of Rule Exception Requested</b>	A contract term longer than sixty (60) months is needed to extend this contract's end date to 6/30/2022 to coincide with the end date of the Mainframe Services Contract (Edison 42526) with IBM.
<b>8. Justification</b>	SAS Institute requires the State to retain the software licenses while IBM provides mainframe services.
<b>Agency Head Signature and Date (contracting agency head or authorized signatory)</b> 	

# Amendment Request

Route a completed request, as one file in PDF format, via e-mail attachment sent to: [Agsprrs.Agsprsr@tn.gov](mailto:Agsprrs.Agsprsr@tn.gov)

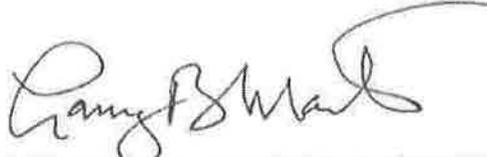
APPROVED

*Michael F. Perry*

CHIEF PROCUREMENT OFFICER

DATE

Request Tracking #	31701-03113	
1. Procuring Agency	Finance & Administration	
2. Contractor	SAS Institute	
3. Contract #	27225	
4. Proposed Amendment #	2	
5. Edison ID #	27225	
6. Contract Begin Date		7/1/2011
7. Current Contract End Date - with ALL options to extend exercised		6/30/2015
8. Proposed Contract End Date - with ALL options to extend exercised		06/30/2022
9. Current Maximum Contract Cost - with ALL options to extend exercised		\$760,958.00
10. Proposed Maximum Contract Cost - with ALL options to extend exercised		\$760,958.00
11. Office for Information Resources Pre-Approval Endorsement Request - information technology service (N/A to THDA)	<input type="checkbox"/> Not Applicable	<input checked="" type="checkbox"/> Attached
12. eHealth Pre-Approval Endorsement Request - health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
13. Human Resources Pre-Approval Endorsement Request - state employee training service	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached
14. Explanation Need for the Proposed Amendment		
<p>Software from SAS Institute is used by the State for mainframe services. Beginning 10/01/2014, IBM will be providing mainframe services to the State and holding the third party software licenses, where possible. SAS Institute is one of the third party software vendors that requires the State to retain the software licenses. Therefore, State must retain this contract with SAS Institute for the term of the Mainframe Services Contract (Edison 42526) with IBM. Only the term of this contract needs to be increased. IBM will make payments directly to SAS Institute for the maintenance on the licenses so no increase is required in the maximum liability of the contract.</p>		

Request Tracking #	31701-03113
<b>15. Name &amp; Address of the Contractor's Principal Owner(s)</b> <i>- NOT required for a TN state education institution</i>  Jim Goodnight 100 SAS Campus Drive Cary, NC 27513	
<b>16. Evidence Contractor's Experience &amp; Length Of Experience Providing the Goods or Services</b>  SAS Institute has been providing mainframe software to the State for over 25 years.	
<b>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b>  None as this amendment simply retains the State's existing licenses with SAS Institute.	
<b>18. Justification</b>  The State must retain a contract with SAS Institute for the term of the Mainframe Services Contract with IBM. The State, IBM, and SAS Institute have signed an access consent agreement allowing IBM to access and use the State's licenses. See the attached document.	
<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 circumstances</i>  	



**AMENDMENT NUMBER 2  
TO  
CONTRACT NUMBER 27225**

Customer name and address: State of Tennessee Department of General Services,  
Purchasing Division  

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665 Mainstream Drive  

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Nashville, TN 37243  

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**WHEREAS**, Customer issued an Invitation to Bid (“ITB”) for Event Number 31701-0000002796 entitled SAS Software Maintenance and Support for Data Center Mainframe regarding the license of certain SAS® software products (“Software”);

**WHEREAS**, SAS Institute Inc., SAS Campus Drive, Cary, North Carolina, USA 27513 (“SAS”) responded to said ITB and was selected by Customer as the successful respondent;

**WHEREAS**, in connection with the ITB, SAS and Customer entered into a contract for the Software #27225, Master License Agreement Number 56725, dated July 23, 2008, and Amendment No. 1, dated June 23, 2008 (collectively, the “Contract”); and

**WHEREAS**, SAS and Customer desire to modify certain provisions of the Contract.

**NOW, THEREFORE**, notwithstanding any provisions to the contrary contained in the ITB or the Contract, the parties hereby agree as follows:

1. The recitals set forth above are incorporated into this Amendment. All capitalized terms not defined herein shall be as defined in the Contract.
2. Notwithstanding anything contained to the contrary in the Contract, the parties acknowledge and agree that the Contract shall be extended for three (3) additional years to June 30, 2018, with four (4) optional years not to exceed twelve (12) months each by the State, at the State’s sole option. In no event, however, shall the maximum term, including all renewals or extensions exceed June 30, 2022.
3. The parties further acknowledge and agree that subject to the terms of that certain Customer Authorization Letter, effective as of October 10, 2014 (“Authorization Letter”), by and among Customer, SAS, and International Business Machines Corporation (“IBM”), IBM shall, on behalf of Customer, pay SAS renewal year fees associated with the Software to the extent set forth in the Authorization Letter.
4. Except as herein modified, all terms and conditions of the Contract remain in full force and effect. This Amendment, along with the Contract, represents the parties’ complete and exclusive statement on the subject matter herein. Any modifications must be in writing and signed by both parties.

**[Signatures Follow]**

Accepted by:

Customer: State of Tennessee,  
Department of General Services

SAS Institute Inc.

By: \_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Title

On \_\_\_\_\_  
Date

By: \_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Title

On \_\_\_\_\_  
Date

100.40.LBF001/07JAN15

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**ATTACHMENT C  
CUSTOMER AUTHORIZATION LETTER**

Amy Wendelgass  
Contracts Division  
SAS Institute Inc.  
SAS Campus Drive, T1068  
Cary, NC27513

Re: License Agreement Number(s) 56725

Dear Ms. Wendelgass:

The State of Tennessee ("Customer") currently licenses various SAS Institute Inc. ("SAS") mainframe software products for its own internal use under the above-referenced license agreements. IBM has entered into an agreement with Customer to assume certain operational and financial responsibilities under those license agreement(s) related to SAS software identified in Exhibit A ("Software"), including access to the Software to support Customer's use of the Software. IBM employees and IBM contractors will perform services for Customer in compliance with Customer's license agreement(s) with SAS as though they were Customer employees and will not provide any services in connection with the Software which Customer is not expressly authorized to perform by or for itself under the terms of its license agreement(s) with SAS. Under the provisions of Tennessee law, Customer cannot be responsible for the acts or omissions of a party such as IBM. Customer represents that it is currently in compliance with its license agreement(s) with SAS. Customer and IBM shall each abide by the terms and conditions of the relevant license agreement(s) which IBM will be assuming and will protect SAS intellectual property rights in accordance with such license(s). SAS consents to IBM's use of the Software on behalf of Customer under the terms and conditions of Customer's license agreement(s) with SAS.

Customer has authorized IBM to administer certain aspects of Customer's license agreement(s) with SAS subject to Customer's approval, including CPU redesignations, upgrades, and downgrades. The Software is or will be installed on the mainframe CPUs specified in Exhibit A. In addition, Customer elects to suspend the direct billing of, and payment by, Customer for Software license fees during Customer's outsourcing arrangement with IBM. Customer authorizes IBM to pay license fees to SAS on behalf of Customer for Software in accordance with that agreement between SAS and IBM effective December 15, 2008. However, Customer, and not IBM, will remain solely responsible for payment to SAS of any fees which may be incurred under Customer's license agreement(s) with SAS for any fees negotiated with SAS for non-standard activities (e.g. access by Customer's affiliates, remote access from outside the United States, etc.). All fees for non-standard activities shall be approved by Customer in advance and shall be evidenced in writing and signed by the authorized signatories of Customer and SAS.

Customer represents that it has obtained all required corporate or other authority needed to allow IBM to act on behalf of Customer with respect to Software. Customer acknowledges that SAS is entitled to rely upon Customer's representations under this letter and IBM's representation on behalf of Customer. Customer understands that SAS may provide information to IBM to support IBM's activities on behalf of Customer that SAS typically treats as private business information.

Upon the expiration of Customer's relationship with IBM, Customer will notify SAS and will resume any then existing financial and other obligations regarding the Software under Customer's license agreement(s) with SAS. Likewise, in the event of termination of the above-referenced agreement between SAS and IBM, Customer will resume all financial and other obligations regarding Software under Customer's license agreement(s) with SAS. Customer understands that neither IBM nor Customer has the right to physically transfer Software to any third party without written consent of SAS.

Should you have any questions or require any further information please call Rickey Reynolds with IBM (720-396-7370) or reynolri@us.ibm.com. Thank you for your cooperation in this matter.

Sincerely,

Customer: State of Tennessee

By Michael F. Perry  
Authorized signature  
Michael F. Perry  
Name (type or print)  
Chief Procurement Officer  
Title  
On 10/9/14  
Date  
Telephone No. 615 741-1035

International Business Machines Corporation

By [Signature]  
Authorized signature  
Michael F. Campbell  
Name (type or print)  
IBM Account Executive  
Title  
On 10/9/2014  
Date  
Telephone No. 615-484-6713

SAS:

Debbie Faircloth  
Title  
October 10, 2014  
Date  
Telephone No. 919-531-7034

 Debbie Faircloth  
Senior Manager  
Contracts Administration  
SAS Institute Inc.







**AMENDMENT NUMBER 1  
TO  
CONTRACT NUMBER 27225**

**Customer name and address:** State of Tennessee Department of General Services,  
Purchasing Division  
665 Mainstream Drive  
Nashville, TN 37243

**WHEREAS**, Customer issued an Invitation to Bid ("ITB") for Event Number 31701-0000002796 entitled SAS Software Maintenance and Support for Data Center Mainframe regarding the license of certain SAS® software products ("Software");

**WHEREAS**, SAS Institute Inc., SAS Campus Drive, Cary, North Carolina, USA 27513 ("SAS") responded to said ITB and was selected by Customer as the successful respondent;

**WHEREAS**, in connection with the ITB, SAS and Customer entered into a contract for the Software ("Contract"); and

**WHEREAS**, SAS and Customer desire to modify certain provisions of the Contract and clarify the final documentation thereof in consideration of further benefits to each.

**NOW, THEREFORE**, notwithstanding any provisions to the contrary contained in the ITB or the Contract, the parties hereby agree as follows:

1. The recitals set forth above are incorporated into this Amendment. All capitalized terms not defined herein shall be as defined in the Contract.
2. The Contract is made up of the following documents and the order of precedence is as follows:
  - a. This Amendment Number 1;
  - b. Contract #27225 (a copy of which is attached as Exhibit A hereto) that consists of specifications, terms and conditions (certain sections of which have been revised by SAS and accepted by the State) and Master License Agreement Number 56725 between SAS and the State of Tennessee Department of General Services, dated July 23, 2008 ("MLA").
3. For the avoidance of doubt, the parties acknowledge and agree that the revisions made by SAS and accepted by the State in the terms and conditions of the Contract were previously negotiated between the parties in 2008 under the predecessor contract set forth in the Invitation to Bid Solicitation Number 2059961, as amended by Amendment Number 1 to Invitation to Bid Solicitation Number 2059961.
4. As set forth in SAS' proposed revisions to Section 2 of the "Special Terms and Conditions" in the Contract ("Special Terms"), the total number of years of the Contract is four (4) years, consisting of a one (1) year initial contract term and three (3) one year options to renew the Contract.
5. With respect to Section 11 "Inspection/Facilities" of the Special Terms, the State has accepted SAS' proposed language as set forth in Exhibit A. Since this is a sole source and the State must have the Software, the State has no choice but to accept SAS' language.

6. The last sentence of the fourth paragraph under Section 18 of the Special Terms is hereby deleted and replaced with the following:

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, subject to Section 10.2 of the Master License Agreement No. 56725 between contractor and the State.

7. With respect to Section 19 "Subcontracting: Responsibilities and Liabilities, Bond Required if Subcontracting" of the Special Terms, the State has accepted SAS' proposed revisions as set forth in Exhibit A. Since this is a sole source and the State must have the Software, the State has no choice but to accept SAS' deletion of the second, third and fourth paragraphs. The State would like to note if SAS uses subcontractors in the future we expect SAS to abide by these terms.
8. Section 32 of the terms and conditions of the Contract entitled "Federal Economic Stimulus Funding" is hereby deleted in its entirety.
9. Except as herein modified, all terms and conditions of the Contract and the Master License Agreement remain in full force and effect. This Amendment, along with the MLA and the Contract, represents the parties' complete and exclusive statement on the subject matter herein. Any modifications must be in writing and signed by both parties.

Accepted by:

Customer: State of Tennessee,  
Department of General Services

SAS Institute Inc.

By:

John Bissell  
Authorized signature

John Bissell  
Name (type or print)  
Purchasing Director  
Title

On

11-21-11  
Date

By:

Dabbe Faircloth  
Authorized signature

SAS Dabbe Faircloth  
Manager  
Contracts Administration  
SAS Institute Inc.

Title

On

11/18/11  
Date

100.40.ALK003.2/26OCT11  
Lg100.40.VK008/27MAR08

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### Master License Agreement

SAS Institute Inc. ("SAS") World Headquarters SAS Campus Drive • Cary, North Carolina 27513 Tel: (919) 677 8000 • Fax: (919) 677 4444 <a href="http://www.sas.com">http://www.sas.com</a>	<b>Customer Name:</b> State of Tennessee Department of General Services ("Customer")
	<b>Street Address:</b> 312 Eighth Avenue
	<b>City, County, State, Country, Zip Code:</b> Nashville, TN 37243-0557
	<b>Taxpayer ID Number:</b>

SAS and Customer enter into this Master License Agreement ("MLA") in Tennessee as of the last date of signing. Customer may license SAS® software ("Software") or may acquire services from SAS ("Services") by executing supplements to this MLA ("Supplements"). This MLA and its Supplements (collectively, "Agreement") govern Customer's license of Software listed on the applicable Supplement and any related user documentation or Customer's acquisition of Services listed on the applicable Supplement.

**1. License Grant; Authorized Use.** SAS grants Customer a nonexclusive, nontransferable and nonassignable license to use the Software with designated operating systems under the Agreement. Except as otherwise provided in the Agreement, the Software may be accessed only by Customer's employees and on site contractors ("Users") doing work in the Territory solely for Customer. The license is an annual license renewed at the mutual agreement of the parties. Renewal is accomplished by SAS sending an invoice for the applicable Software license renewal fees and Customer paying the invoice.

**1.1 Territory; Report Access.** Customer may install and use the Software (a) within the territory listed on the applicable Supplement ("Territory"); (b) on a portable computer in countries outside the Territory for up to three (3) months of an annual license period; and (c) in a manner allowing any party in or outside the Territory limited access to Software applications to view reports showing results of Customer's analysis of Customer's data ("Reports"). Customer may allow this limited Report viewing via the Internet, Customer's Intranet or terminal emulation sessions.

**1.2. Other Uses of the Software.**

This MLA describes standard rights of use. The Supplements may include special use rights and limits related to specific Software offerings. SAS grants no usage rights beyond those specifically listed in the MLA and Supplements. By way of example, the following uses are prohibited unless specifically set forth in a Supplement or written amendment to the Agreement: (a) installation or use outside the Territory; (b) use for the benefit of a third party in exchange for compensation; (c) use in application or data service provision, outsourcing, time-sharing, data or information technology management, or other similar arrangements; (d) use to process third party data; or (e) allowing any party other than Users to use, edit, modify, or otherwise access underlying Software, or to perform free form programming with the Software.

**2. Authorized Hardware.** Customer shall install the Software only on hardware authorized under the Agreement ("Authorized Hardware"). If the Software is licensed for use on mainframe or server hardware, Authorized Hardware is hardware located on Customer's premises that Customer identifies to SAS by type and CPU number. If the Software is licensed for use on personal computers, Authorized Hardware is hardware owned or leased by Customer or its employees.

**3. Fees.** License fees for each Software product are based on the applicable pricing metric and the usage rights and limits set forth in the Agreement. First year fees, pricing metrics and any special usage rights or limits are listed on the Supplement. Renewal fees are listed on invoices and may vary each year. Prior to any license renewal period, SAS may propose pricing metric changes. Some pricing metrics are based on use of certain Software offerings as an integrated solution. Accordingly, the Software components in these offerings may be used only through the Software under which they are bundled and Customer may not use or deploy any individual component as a replacement for other SAS software.

**4. Product Authorization Code.** Customer may allow Users to access only Software licensed to Customer for which Customer receives a Product Authorization Code. Customer shall not allow Users to install or attempt to use other products contained on media received from SAS. The "Product Authorization Code" is a component of the Software that enables the Software to operate for the applicable license period. At each new license period, or if required as a result of changes in Authorized Hardware or Software, Customer must apply a new Product Authorization Code to keep the Software operating. SAS is not required to provide the Product Authorization Code if Customer is in breach of the Agreement or has not paid any undisputed amounts due under the Agreement. SAS is not liable for damages caused by the resulting Software interruption. Customer may allow only Users to access the Product Authorization Code. Customer acknowledges and agrees that the Product Authorization Code is SAS' confidential and proprietary information.

**5. Copying.** Customer may copy the Software only for (a) disaster recovery and back-up purposes, and (b) installation of personal computer Software authorized hereunder. All copies remain the property of SAS. Customer may deliver a copy of the Software to a disaster recovery contractor to perform temporary disaster recovery work for Customer. Customer shall give SAS the name and address of the disaster recovery contractor before delivery. The identical copyright notices and any other proprietary rights notices found on the original Software media must be reproduced on all copies authorized under this Section.

CH 09463 SITE ALL BK MLA  
 except MF site 793 CHH

**6. Title; Source Code.** Title to the Software and its documentation remains with SAS and its licensors at all times. Copyright notices and other proprietary rights notices in the Software shall not be deleted or modified. The Agreement does not transfer any ownership rights. Source code from which the Software object code is derived ("Source Code") is not being provided and is a trade secret of SAS and SAS' licensors to which access is not authorized. Neither Customer nor any other User shall reverse engineer, reverse assemble or decompile the Software or in any way attempt to recreate the Source Code, except and only to the extent applicable laws specifically prohibit such restriction.

**7. Technical Support.** During the term of the Software license, SAS will use reasonable efforts, either by telephone or in writing, to help Customer solve specific problems with installation or use of the Software within the Territory. Customer may obtain on-site Software support from SAS by executing an applicable Supplement with SAS and paying applicable additional fees to SAS. It may not be possible for SAS to solve all problems or correct all errors in the Software. From time to time, SAS may make available, and Customer agrees to use reasonable efforts to install, new releases, updates and corrective code. During ongoing Software development, SAS may add, change or delete individual components or functionality in new releases. Such Software modifications shall be subject to the terms of the Agreement. If Customer chooses not to install the most current release of the Software, the level of technical support may diminish over time.

**8. Payment.**

**8.1 Invoices.** SAS will invoice Customer (a) prior to each applicable license period, for any Software license fees due and (b) as specified in the applicable Supplement for any Services fees due. Payment terms for all invoices are net thirty (30) days. Customer is exempt from all Federal, State, and Local taxes and shall provide a valid tax exemption certificate upon request. Customer is not responsible for taxes based on SAS' income. Except as otherwise allowed in the Agreement, refunds are not available after the Product Authorization Code has been provided.

**8.2 License Fee Calculations; Upgrades.** Customer agrees to (a) keep records of where the Software is being used and the extent of usage of the Software relative to the pricing metric and the applicable usage rights and limits, and (b) provide a copy of such records to SAS upon reasonable request. Customer may call or write SAS to change operating systems, Authorized Hardware or any factor affecting the applicable pricing metric or any applicable usage rights. These changes may result in additional license fees which are effective and will be invoiced as of the time of the change.

**9. Limited Warranties and Representations.**

**9.1 Warranties by SAS; Remedies.**

**9.1.1** SAS warrants that it has the right to license the Software to Customer. The exclusive remedy for breach of this warranty is set forth in Section 11 (Indemnification). Notwithstanding anything in this sub-section to the contrary, any provision or provisions of this sub-section will not apply to the extent they are finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

**9.1.2** SAS warrants that each production release of the Software shall substantially conform to its documentation including any updates thereto, and the Software and the media on which it is installed shall be free of software viruses when received by Customer. As the exclusive remedy for breach of these warranties, SAS, at its option, shall: (a) repair the Software; (b) replace the Software; or (c) terminate the Software license and refund the fees paid for the Software at issue during the then-current license period. Notwithstanding anything in this sub-

section to the contrary, any provision or provisions of this sub-section will not apply to the extent they are finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

**9.2 Warranty Disclaimers.** SAS AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SAS AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL RESULT IN COMPLIANCE, FULFILLMENT OR CONFORMITY WITH THE LAWS, RULES, REGULATIONS, REQUIREMENTS OR GUIDELINES OF ANY GOVERNMENTAL AGENCY. SAS' LICENSORS PROVIDE THEIR SOFTWARE "AS IS." NOTHING IN THIS SUBSECTION NEGATES THE EXPRESS WARRANTIES SAS PROVIDES IN THE AGREEMENT.

**9.3 Representations by Customer.** Customer represents it shall (a) implement procedures to verify accuracy of data input and output while using the Software, and (b) inform all parties authorized to use the Software of the relevant terms of the Agreement and any related user documentation, and be responsible for their adherence to such terms. Customer agrees that the Software and Services, in and of themselves, will not ensure compliance with laws.

**10. Exclusions of Damages; Limitation of Liability.**

**10.1 Exclusions of Damages.** NEITHER CUSTOMER, SAS, NOR SAS' LICENSORS ARE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR RELIANCE DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE), EVEN IF THEY HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER SAS NOR SAS' LICENSORS ARE LIABLE FOR ANY CLAIM AGAINST THE CUSTOMER BY A THIRD PARTY RELATING TO USE OF THE SOFTWARE, EXCEPT AS SET FORTH IN SECTION 11 (INDEMNIFICATION). SAS' LICENSORS ARE NOT LIABLE FOR DIRECT DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE) AND DISCLAIM ANY LIABILITY CONNECTED WITH USE OF THE SOFTWARE. THE PARTIES MAKE THESE EXCLUSIONS IN CONSIDERATION OF THE FEES PAID AND LICENSES GRANTED UNDER THE AGREEMENT.

**10.2 Limitation of Liability.** THE TOTAL AMOUNT CUSTOMER MAY RECOVER FOR ALL CLAIMS RELATING TO THIS AGREEMENT IS LIMITED IN THE AGGREGATE TO THE FEES PAID FOR THE SOFTWARE AT ISSUE DURING THE RELEVANT LICENSE PERIOD AND FOR THE SERVICES AT ISSUE.

**10.3 Applicability.** This Section does not apply to the indemnification obligations in Section 11 or to either party's violation of the other's intellectual property rights. The limitations in this Section shall apply even if any of the warranties provided in Section 9 fail of their essential purpose. Some jurisdictions do not allow limitations of liability or exclusions for incidental or consequential damages, so certain provisions of this Section may not apply to Customer; however, they apply to the greatest extent permitted by applicable law.

**10.4** Notwithstanding anything in this sub-section to the contrary, any provision or provisions of this section will not apply to the extent they are finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

**11. Indemnification.** Customer agrees to promptly notify SAS in writing of any claim made against Customer for: (a) copyright, patent, trade secret or other intellectual property rights violation relating to the Software; or (b) bodily injury, death or damage to tangible property, excluding damage to software or data, arising

solely from actions for which SAS is legally responsible. Customer further agrees to allow SAS to control the litigation or settlement of any such claim and to cooperate with SAS in the investigation, defense and settlement thereof. Provided Customer complies with this Section, SAS shall indemnify Customer for such claim by paying for the costs and attorneys' fees Customer incurs at SAS' direction and any judgment finally awarded against Customer or settlement approved by SAS. Customer may participate at Customer's own expense. If such claim in (a) above is made or, in SAS' opinion, is likely to be made, then SAS, at its option, may: (1) modify the Software; (2) obtain rights for Customer to continue using the Software; or (3) terminate the license for the Software at issue and refund the then-current fee paid for such Software. Customer agrees to abide by SAS' decision and, if appropriate, install a different version of the Software or stop using the Software. This indemnification obligation does not apply to the extent: (i) a claim is based on Customer's combination of SAS Software with other software, or modification to the Software, if such claim would not have been made but for Customer's combination or modification; or (ii) as of the date the claim arose, Customer had not installed the latest version of, or update to, the Software as instructed by SAS prior to such date, if such claim would not have been made if the update or latest version had been installed. Notwithstanding anything in this section to the contrary, the State of Tennessee does not accord to SAS through its attorney(s), any right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106" and SAS shall participate to the fullest extent permitted by law.

**12. Termination; Expiration.** Customer may terminate an annual license for any Software at any time. SAS may terminate the Agreement immediately for any violation by Customer of SAS' intellectual property rights. For any other breaches, SAS may terminate the Software license for a breach of the Agreement if not cured within ninety (90) days of SAS' written notice. Obligations in the Agreement that by their nature are continuing will survive termination or expiration. Upon termination or expiration of each Software license hereunder, or when a User, Related Entity or disaster recovery contractor is no longer authorized to access the Software, Customer agrees to reclaim, delete, and destroy the Software at issue, along with any related user documentation.

**13. Governing Law; Export and Import Restrictions.** The laws of Tennessee, excluding choice of law provisions, govern

the Agreement. SAS hereby notifies Customer that United States export laws and regulations apply to the Software. Both parties agree to comply with these and other applicable export and import laws and regulations. The parties expressly agree to exclude from the Agreement the United Nations Convention on Contracts for the International Sale of Goods.

**14. General.**

**14.1 Severability.** If a court of competent jurisdiction finds any part unenforceable, that part is excluded, but the remainder of the Agreement stays in full force and effect.

**14.2 No Waiver.** Failure to require compliance with a part of the Agreement is not a waiver of that part. Nothing in this subsection waives any remedy SAS may have under the Agreement at law, in equity, or otherwise.

**14.3 Non-assignment.** Customer may not assign the Agreement or any of its rights or obligations hereunder without SAS' written permission, which permission will not be unreasonably withheld.

**14.4 Audit.** Upon fifteen (15) business days' notice to Customer, SAS will have the right to conduct an on-site audit during Customer's normal business hours to verify compliance with the terms and conditions of the Agreement. Customer shall cooperate with SAS by: (a) making applicable records available; (b) providing copies of the records requested; and (c) directing all agents to cooperate. If the audit reveals that Customer owes additional license fees, Customer shall pay the amounts owed and SAS' reasonable expenses in conducting the audit.

**14.5 Injunctive Relief.** Breach of SAS' or SAS' licensors' intellectual property rights may lead to damages not adequately remedied by an award of money; therefore, to the fullest extent permitted by law, SAS may protect those intellectual property rights through temporary restraining orders or injunctions, without the obligation of posting bond.

**15. Complete Agreement; Modifications.** Customer's ITB Solicitation Number 2058995, the resulting contract and Amendment attached hereto along with this Master License Agreement and invoices arising under it are the parties' complete and exclusive statement relating to their subject matter. Modifications must be in writing, signed by both parties, and specifically reference the Agreement. Additional or different terms on current or future Customer or third party purchasing documents are expressly objected to and rejected.

The individuals signing below represent they have authority to bind the named parties to this MLA.

Accepted by:

State of Tennessee Department of General

Customer: Services

By

*John Bissell*  
Authorized signature

Name (type or print)

John Bissell  
Director of Purchasing  
Title

On

4-10-08  
Date

SAS Institute Inc.

By

*Victoria Clayton*  
Authorized signature

Name



Victoria Clayton  
Regional Contracts Manager  
Contract Operations  
SAS Institute Inc.

Title

APR 03 2008

On

Date

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PF08  
lg01.0001/01MAY07

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**STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES, PURCHASING DIVISION**

**Agency Term Contract Multi-Year - Issued to:**

SAS Institute Inc  
PO Box 8000  
Cary NC 27511

**CONTRACT NUMBER: 27225**

**TITLE: SAS Software Maintenance and Support for Data Center Mainframe**

START DATE: July 01, 2011

END DATE: June 30, 2015

**Contract Contact Information:**

State of Tennessee  
Department of General Services, Purchasing Division  
Contract Administrator: John D Askins  
665 Mainstream Drive  
Nashville, TN 37243  
Phone: 615-253-1855  
Fax: 615-741-0684  
[john.askins@tn.gov](mailto:john.askins@tn.gov)

**Line Information**

**Line 1**

Item ID: 1000070916

*Mainframe software, SAS, software maintenance license annual renewal fees (Year 1) as per specifications,*

*Location: Data Center, 901 5th Ave N., Nashville, TN 37243*

Unit of Measure: YR

Vendor Item/Part #: SAS MAINT YEAR 1

**Unit Price: \$ 166,770.00**

**Line 2**

Item ID: 1000070917

*Mainframe software, SAS, software maintenance license annual renewal fees (Year 2) as per specifications,*

*Location: Data Center, 901 5th Ave N., Nashville, TN 37243*

Unit of Measure: YR

Vendor Item/Part #: SAS MAINT YEAR 2

**Unit Price: \$ 180,794.00**

**Line 3**

Item ID: 1000070918

Mainframe software, SAS, software maintenance license annual renewal fees (Year 3) as per specifications,  
Location: Data Center, 901 5th Ave N., Nashville, TN 37243

Unit of Measure: YR

Vendor Item/Part #: SAS MAINT YEAR 3

Unit Price: \$ 197,832.00

**Line 4**

Item ID: 1000108990

Mainframe software, SAS, software maintenance license annual renewal fees (Year 4) as per specifications,  
Location: Data Center, 901 5th Ave N., Nashville, TN 37243

Unit of Measure: YR

Vendor Item/Part #: SAS MAINT YEAR 4

Unit Price: \$ 215,562.00

**Line 5**

Item ID: APCAT Special Item /Special Request for MIPS Increases that may be necessary.

APPROVED:

John Bissell  
DIRECTOR OF PURCHASING

BY:

Sharon Page  
PURCHASING AGENT

06-17-11  
DATE

Specifications: Edison Sourcing Event # 31701-6314-2796 SAS Software Renewal

The purpose of these specifications is to provide the basis for an invitation to bid to establish an agency term contract to supply The Department of Finance and Administration, OIR-Data Center, with SAS Maintenance License Renewal Fees.

In the event that a new release becomes available during the term of the contract, with an operating system already in use at the state, upon SAS' receipt of the state's written request and without additional charge, such new release shall be added to this contract for use by the state as provided herein during the term of the contract.

The state will not, during the term of the contract, increase the computing capacity of its hardware beyond 2,500 MIPS, a measurement of computing capacity expressed in terms of millions of instructions per second determined by ratings published by the Gartner Group. For the base SAS product installed on the state's "Class S" mainframe and residing on SAS' internal site no. 793, the state is remaining under SAS "BB" policy in which SAS will charge the state then current machine "Class L" renewal year fees for 2011, "Class M" for 2012, "Class N" for 2013 license and "Class O" for 2014. Renewal year fees for subsequent license periods will be at the then current applicable fees for SAS. The state does have an option to upgrade from the current z9 2094-507 to new technology as long as the state does not exceed the 2,500 MIP allowance for the contract.

Price quoted on price unit page for lines 00001-00004 shall be inclusive of all expenses incurred by vendor and shall include all specifications as listed below.

No additional charges shall be paid by agency.

Specifications:

SAS software maintenance annual renewal fees for the following:

Base SAS  
SAS STAT  
SAS ETS

Vendor may upon request from the state deliver updates/maintenance to software via tape, CD-ROM, DVDM, or download over the internet to be installed by a state systems programmer. Agency shall be responsible for supporting the product and applying maintenance as it becomes available.

Delivery:

Vendor will use reasonable efforts to deliver the software within a 14 day calendar period after receipt of purchase order.

Upgrade releases:

Vendor will use reasonable efforts to forward all upgrades to agency within 10 business days after new upgrades have been released.

Specifications: Edison Sourcing Event # 31701-6314-2796 SAS Software Renewal

Technical support:

Support will be provided in accordance with SAS' standard technical support process at <http://support.SAS.com/techsup>

Tech support # \_\_\_\_\_

Warranty:

Software will be free of defects for 90 days or vendor will replace at no additional charge to the state.

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## Terms and Conditions

Event Number: 31701-000002796

### Standard Terms and Conditions

#### Instructions to Bidders:

1. Read the entire bid, including all terms and conditions and specifications.
2. If submitting the bid by mail: All bid prices must be typed or written in ink on the Line Details portion of the Invitation to Bid (ITB); any corrections, erasures or other forms of alteration to unit prices must be initialed by the bidder.
3. If submitting the bid by mail, the bid must be manually signed in ink; failure to do so will cause rejection of your bid. If submitting the bid on-line, your electronic signature constitutes having signed the bid.
4. Bid prices shall include delivery of all items F.O.B. destination or as otherwise specified.
5. Address all inquiries and correspondence to the Purchasing Agent indicated in the Invitation to Bid.
6. I (we) agree to strictly abide by all the statutes and terms contained in the rules of the Department of General Services, Purchasing Division which are by reference made a part hereof, in addition to the Standard and Special Terms & Conditions, and Specifications embodied in this Invitation to Bid.
7. **IMPORTANT:** By submitting the bid, the Bidder certifies compliance with the above and further certifies that this bid is made without collusion or fraud.
8. State statutes require that all bidders be registered prior to the issuance of a contract or a purchase order. Vendors/Bidders can register online at the State of Tennessee Supplier Portal:  
<https://supplier.edison.tennessee.gov>.
9. I (We) propose to furnish and deliver any and all of the supplies, services, and/or other commodities named in the Invitation to Bid, and for which I (we) have set prices in my (our) offering.
10. It is understood and agreed that this bid, when certified by authorized signature, shall constitute an offer, which when accepted in writing by the Department of General Services, Purchasing Division, and subject to the terms and conditions of such acceptance, will constitute a valid binding contract between the State of Tennessee and the Vendor/Contractor (bidder) submitting such offering.
11. By my (our) written signature on this bid I (we) guarantee and certify that all items included in the bid meet or exceed any and all State specifications covering such items. I (We) further agree, if awarded a contract or purchase order as a result of this bid, to deliver such commodities, service or merchandise which meet or exceed the specifications.
12. It is understood and agreed that no contract may be assigned, sublet, or transferred without the written consent of the Deputy Commissioner, Department of General Services.

13. The inclusion in any bid of a limitation of remedies clause or a limitation of liabilities clause shall be cause for rejection except in bids for telecommunications and information technology goods and services. Pursuant to Tennessee Code Annotated 12-3-315(d), if a limitation of liability is included in the bid for telecommunications and information technology goods and services it can be for not less than two (2) times the value of the contract and it shall not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. Provided, however, if the Commissioner determines that it is necessary to protect the interests of the state, the Commissioner may petition the Board of Standards to approve contractor liability in excess of two (2) times the value of the contract. If the Board agrees with the Commissioner, it may approve such a higher liability amount.

14. All bidders have the right to inspect the bid file, prior to award, upon completion of the evaluation by the Purchasing Division. Interested bidders should contact the Purchasing Agent following the bid opening date or once the file is open for the seven (7) day inspection period. A "File Open for Inspection" letter will be sent to all bidders detailing the bidder(s) recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the bid file will be provided to the bidder. If there is no request to inspect the bid file by the end of the seven (7) day inspection period, the Purchasing Agent will proceed with the award.

15. Protest by Vendor: Pursuant to Tenn. Code Ann. 12-3-214 (authority to resolve protested bids, bid process or procedures, and awards), vendors may protest. Please refer to the Agency Purchasing Procedures Manual, Section 14.13.1 for protest procedures and protest bond requirements or contact the purchasing agent at 615-741-1035. The manual is located on the Purchasing Division Website: [www.tennessee.gov/generalserv/purchasing](http://www.tennessee.gov/generalserv/purchasing)

16. Bid Mailing Instructions: Each individual bid proposal must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the bid opening date. Bids mailed for Overnight/Express delivery should be mailed in a properly labeled sealed envelope to the following address:

Department of General Services  
Purchasing Division  
665 Mainstream Drive  
Nashville, TN 37228

If mailing your bid using the United States Postal Service, please send your bid to:

Department of General Services  
Purchasing Division  
665 Mainstream Drive  
Nashville, TN 37243-1003

Please note the Zip Code difference.

17. Subject to paragraph 13, the Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the

Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106

18. Contracts are entered into solely for the convenience of the State of Tennessee. The vendor/contractor understands and agrees that the State of Tennessee, as a signatory party to a contract, is solely responsible for its performance, and that the officers and employees of the Department of General Services, Purchasing Division, act exclusively as agents of the State for the award, consummation, and administration of contracts and are not personally liable for any performance or nonperformance by the State.

19. A bid must be received in the Purchasing Division's office on or before the date and hour designated for the bid opening or the bid will be rejected.

20. The Purchasing Division may reject any or all bids. Action to reject all bids shall be taken only for unreasonably high prices, errors in the Invitation to Bid (ITB), cessation of need, unavailability of funds, or any other reason approved by the Board of Standards. The Board of Standards has authorized rejection of all bids for failure to secure adequate competition. If an ITB is to be re-advertised, all prior bids shall remain closed to inspection until the evaluation of the re-advertisement is complete.

21. All present and former employees or officials of the State are referred to Tennessee Code Annotated 12-4-103.

22. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-bid conference or other scheduled function should contact the Purchasing Division to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephonically, or otherwise, and should be made no less than ten (10) days prior to the scheduled event, to allow time for the Purchasing Division to provide such aid or service.

23. No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State Constitutional and/or statutory law shall be excluded from participation in, or denied benefits of, or be otherwise subjected to discrimination in the performance of the Contract or in the employment practices of the vendor/contractor. The vendor/contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to employees and applicants, notices of non-discrimination.

24. TAXES: Purchases of goods by the State of Tennessee are exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. 67-6-329(a) (4), and the state is generally exempt from Federal excise tax. Contractors are subject to Tennessee sales and use tax on all materials and supplies used in the performance of a contract, whether such materials and supplies are purchased by the contractor, produced by the contractor, or provided to the contractor by the State, pursuant to Tenn. Code Ann. 67-6-209. The contractor agrees to pay all taxes incurred in the performance of an awarded contract.

State agencies which procure products for the purpose of resale shall register with the Department of Revenue. Upon registration the agency will issue resale certificates to the successful contractor(s) for products procured for resale. The agency is responsible for the collection of the appropriate sales or use tax when the product is sold.

25. Exceptions to terms and conditions and/or those proposed by the bidder which may vary from the invitation to bid may render the bid unresponsive and subject the bid to rejection.

26. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and/or back orders will only be accepted with receiving agency's prior authorization.

27. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the bid opening, unless otherwise stated in this event.

28. Manufacturers of chemical products which are the subject of purchase contracts for the State of Tennessee shall list and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDS search repository or on the manufacturer's website so that such information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's universal resource locator (URL) for its MSDS in the event. For purposes of this MSDS requirement, the Department of General Services recognizes the following URL for national MSDS search repository: MSDS-SEARCH, which can be accessed on the internet at: <http://www.msdsearch.com>.

29. 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 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, Section 9-8-101 through 9-8-407.

30. State and Federal Compliance: The contractor shall comply with all applicable state and federal laws and regulations in the performance of this contract.

31. Prohibition of Illegal Immigrants: The requirements of State of Tennessee's Public Acts, 2006, Chapter Number 878 and Executive Order 41 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.

As required by Public Acts, 2006, Chapter Number 878, no person may enter into a contract to supply goods or services to the State without first attesting in writing that the person will not knowingly utilize the services of Illegal Immigrants in the performance of this contract, and will not knowingly utilize the services of any subcontractor who will utilize the services of Illegal Immigrants in the performance of this contract. 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 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. The contractor hereby attests, certifies, warrants, and assures that it shall comply with this term and condition for the entire contract period.

The contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 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 year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract. The contractor may appeal the imposition of the one-year prohibition by utilizing an appeals process established by the Commissioner of Finance and Administration.

As per Executive Order 41, the contractor shall be required to submit semi-annual Attestation Forms and obtain a signed Attestation Form from any subcontractor prior to the use of the subcontractor and semi-annually thereafter during the contract period. The records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State. Records shall include but are not limited to the following:

Documentation on contractors' employees and subcontractor personnel working on this contract showing that they are legal to work in the United States and payroll records.  
Signed and dated Attestation Forms for your company that have been submitted to the Purchasing Division and Attestation Forms obtained from subcontractor(s).

Note: The contractor shall be required to obtain prior approval to subcontract from the Deputy Commissioner of General Services, Purchasing Division.

By authorized signature on this Invitation to Bid the contractor constitutes signing the Attestation Form for the initial six (6) months of the contract period. The contractor shall be required to submit signed Attestation Forms on a semi-annual basis from the start date of the contract period through to its completion date to the Purchasing Division. Such attestations shall be maintained by the contractor in a permanent file on the vendor premises and made available to State officials upon request. The State of Tennessee provides an "approved Attestation Form" to support the reaffirmation process. The form can be accessed and printed from the internet at [http://tn.gov/generalserv/purchasing/for\\_bidders.html](http://tn.gov/generalserv/purchasing/for_bidders.html).

### 32. Federal Economic Stimulus Funding

**Federal Economic Stimulus Funding.** To the extent it applies to this contract, this Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

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

a. Federal Grant Award Documents, as applicable.

b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at [www.whitehouse.gov/omb/recovery\\_default/](http://www.whitehouse.gov/omb/recovery_default/), as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at [www.whitehouse.gov/omb/financial\\_offm\\_circulars/](http://www.whitehouse.gov/omb/financial_offm_circulars/).

c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at [www.tnrecovery.gov](http://www.tnrecovery.gov)).

d. The subrecipient Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.

e. The Recovery Act, including but not limited to the following sections of that Act:

(1) Section 1604: Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

(2) Section 1512: Reporting and Registration Requirements.

i. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.

ii. The subrecipient Contractor must maintain current registrations in the Central Contractor Registration ([www.ccr.gov](http://www.ccr.gov)) at all times during which they have an active Contract funded with Recovery Act funds.

(3) Section 1553: Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with

supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:

- i. gross mismanagement,
- ii. gross waste,
- iii. substantial and specific danger to public health or safety,
- iv. abuse of authority, or
- v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

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

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

(4) **Section 902: Access Of Government Accountability Office.** The Contractor shall provide that the Comptroller General and his representatives are authorized:

- i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
- ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.

(5) **Section 1514: Inspector General Reviews.** Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.

(6) **Section 1515: Access of Offices of Inspector General to Certain Records and Employers.** With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
- ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.

(7) **Section 1606: Wage Rate Requirements.** All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

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

(8) Section 1605: Buy American Requirements for Construction Material - Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

e. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.

f. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section Standard Term and Condition 49, "Federal Economic Stimulus Funding."

## Special Terms and Conditions

### 1. F.O.B. Destination (Agency Term Contract)

F.O.B. Point:

Agency Name: Department of Finance and Administration,  
Office for Information Resources

Address: Capitol Complex Service Center  
901 5<sup>th</sup> Avenue North  
Nashville, TN 37243-0291

### 2. Term of Contract - Multi-Year

Total Number of Years: 3

Initial Contract Term with 2  
Renewals

Start Date: July 1, 2011

Initial End Date: June 30, 2012

Final End Date: June 30, 2015

The anticipated effective (start) date and expiration (end) dates of the contract are shown above. If award has not been made by the anticipated effective date, then the contract shall become effective upon the date the bid is accepted and contract awarded by the state, as indicated by the purchasing agent's signature on the contract notice of award (note: the change of effective date may not result in a change of the anticipated expiration date.)

**RENEWAL OPTIONS:** This contract may be renewed upon satisfactory completion of the initial contract term. The state reserves the right to execute up to the number of renewals options listed above annually under the same terms and conditions for a period not to exceed 12 months each by the state. It is mutually understood and agreed that the state's commitment is limited to a base term contract, not to exceed twelve (12) months, which is subject to renewal annually at the state's sole option.

It is understood and agreed that the state reserves the right to extend the term contract period resulting from this solicitation an additional period of time, not to exceed 180 days beyond the normal expiration date of such contract, upon mutual written agreement by both parties, under the same terms and conditions. Provided, however, in no event shall the maximum term of a contract exceed a total of sixty (60) months.

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**3. Volume, Multi-Year**

The total purchases of any individual item on the contract are not known. The Purchasing Division has attempted to give an accurate estimate of probable purchases of each item from the current contract period and projected estimates for the new contract period. The Purchasing Division does not guarantee that the state will buy any or all estimated amounts of any specified item or any total amount.

Purchases Current Contract Period                   \$ 192,062.00

Dates: From July 1, 2010 To June 30, 2011

**Estimated Funding New Contract Period**

1 <sup>st</sup> 12 MONTHS	\$ 166,770.00
2 <sup>nd</sup> 12 MONTHS	\$ 180,794.00
3 <sup>rd</sup> 12 MONTHS	\$ 197,832.00
4 <sup>th</sup> 12 MONTHS	\$ 215,562.00

The vendor/contractor will only be paid for products or services rendered hereunder pursuant to purchase order releases issued to vendor/contractor from the state. The vendor/contractor is not entitled to be paid the maximum liability for any one year under the contract or any extensions of the contract for product or service not requested by the state. Maximum liability represents available funds for payment to vendor/contractor and does not guarantee payment of any such funds to the vendor/contractor per year under this contract unless the state requests product or service and vendor/contractor provides said product or service. The state is under no obligation to request product or service from vendor/contractor in any specific dollar amounts per year under this contract and the state may not request any product or service at all from vendor/contractor during the contract period.

**4. Bids Requested on Brands Specified**

Unit price bids are requested on the brands and models specified.

**5. Bid Offer Expiration**

Enter the expiration date of your bid offer in the space provided on this Invitation to Bid. A minimum period of thirty (30) days from the bid closing date is requested. The state shall have sixty (60) days to accept the bid if a minimum period is not stated.

**6. Freight F.O.B. State Agency (In-House)**

All quotations shall be F.O.B. destination. The term F.O.B. destination shall mean delivered and unloaded in-house or on-site service, with all charges for transportation and unloading prepaid by the vendor/contractor.

**7. Bids requested for % discount/surcharge from published catalogs, price lists or price schedules – Reference Bid Factor #6, PCT\_SFTW\_CATALOG**

For MIPS increases a bidder is required to quote a single percentage, amount of surcharge, amount of discount, or 1.00 (net) applying to the products listed in all the published catalogs, price lists, or price schedules and any supplements on which the bid is based. **Example:** For a "surcharge" bid of +15%, the bidder will enter 1.15, for a discount bid of -10%, the bidder will enter .90. For software support (annual maintenance/support) a bidder is required to quote a single "percentage of net" applying to the price bid for the software item. **Example:** For a "percentage of net" bid of 10%, the bidder will enter .10.

In the event that any items requested in the Invitation to Bid are not available at the time of the bid in any published catalogs, price lists, or price schedules and such items are bid as special products to be provided to the State of Tennessee, then all such items must be listed on a supplement to the most current catalog, price lists, or price schedules with specific catalog or model numbers and prices and all applicable ordering information clearly listed. Catalogs, price lists, or price schedules submitted will be evaluated and may be accepted in whole, or acceptance may be limited to specific items or groups of items or to a specified dollar amount.

The successful bidder will be required to furnish the catalogs, price lists, and price schedules upon which the bid is based to using agencies and when applicable to local government agencies upon request, by direct mail, email or internet. The Purchasing Division will not participate in this distribution, but must approve the catalogs, supplements, or price schedules.

**8. Fixed Bid Price for Contract Period (No Price Increase Allowed) – Reference Lines 1 - 4**

Bid prices must be fixed for the term of the contract, except the state shall be advised of and receive the benefit of any price decrease in excess of five (5) percent automatically. The vendor/contractor must provide written price reduction information within ten (10) days of its effective date.

**9. Vendor Reporting**

Contract vendors will be required to submit annual reports validating contract purchases, including Purchases made by local governments, by period, line item and receiving location. Reports will detail at a minimum the following information:

1. Contract Number
2. Contract Line Item Number
3. Commodity Description
4. Line Item Quantity Purchased
5. Line Item Dollar Amount (Volume) Purchased

Additional report details may be required with a thirty (30) day written notice. Reports are due at the Purchasing Division Office in the first week of the fourth (4<sup>th</sup>) quarter of the contract term. Reports must be submitted electronically or by digital appliance in Microsoft Excel format. Semi-annual or quarterly reports may be requested in writing by the Contract Administrator with a thirty (30) day written notice to the vendor.

#### **10. Bidder's Qualification**

Bidders must, upon request of the state, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions and specifications. The Assistant Commissioner, Department of General Services, Purchasing Division, reserves the right to make the final determination as to a bidder's ability to perform.

#### **11. Inspection/Facilities**

The Purchasing Division may inspect the facilities of any bidder or may require additional information regarding a bidder's ability to perform the proposed contract. Bids may be rejected for lack of apparent ability to perform the proposed contract.

#### **12. Inspection of Materials, Equipment and Products**

All materials, equipment, and products are subject to inspection and testing. Items that do not meet specifications will be rejected. Failure to reject upon receipt does not relieve the vendor/contractor of liability. When subsequent tests after receipt are conducted and when such tests reveal damage or failure to meet specifications, the state may seek damages regardless of whether a part or all of the merchandise has been consumed.

#### **13. Bid Rejection**

The Purchasing Division reserves the right to reject any bid that contains prices for individual items or services that are inconsistent or unrealistic when compared to other prices in the same or other bids, if such action would be in the best interest of the state.

Errors: Each correction made by the bidder on the bid response must be initialed in ink by each correction. No corrections will be made in pencil. No bid or line item shall be altered or amended after the bid opening. In the case of errors in the extension price, the unit price will govern. Failure to comply with the above may be cause for rejection of part or all of the bid.

#### **14. Single Award**

A single contract for all line items will be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. Prices shall be calculated as follows: The bidders unit bid price shall be multiplied by the line item quantity to obtain the line item total. If more than one line item is included in the bid document, each line item total shall be added together for a total price for all line items bid. The bidder must bid all line items to be considered for an award.

#### **15. Award Criteria**

An award shall be made to the lowest responsive and responsible bidder considering the following:

Ability to Perform  
Conformity to Specifications

## 16. State Contract Administrator

Questions or problems arising from bid procedures or subsequent order and delivery procedures should be directed to:

State of Tennessee  
Department of General Services, Purchasing Division  
665 Mainstream Drive  
Nashville, TN 37243-1003  
Attn: John Askins  
Phone: 615-253-1855  
e-mail: [john.askins@tn.gov](mailto:john.askins@tn.gov)

## 17. Purchase Order Releases (Agency Term Contract)

Orders for products or services that are included on agency term contracts shall be prepared by agencies on Departmental Purchase Release Orders and forwarded to the vendor/contractor. These purchase orders, when received by the vendor/contractor, serve as authorization for shipment of product(s) or start of service.

### Billing Instructions:

The vendor/contractor shall invoice the state only after product has been received by the user agency or upon completion of the service described in the purchase order/contract, unless otherwise authorized in writing by the user agency and as required below prior to any payment.

The contractor shall submit an invoice, with all necessary supporting documentation, to the state agency billing address. Such invoice shall clearly and accurately detail the following required information:

1. Invoice/reference number; (assigned by the contractor);
2. Invoice date;
3. Contract and/or purchase order number; (assigned by the state);
4. Account name;
5. Procuring state agency and division name;
6. Account/customer number (uniquely assigned by the vendor/contractor);
7. To the above-referenced account name;
8. Contractor name;
9. Contractor Identification Number; (as referenced in the contract);
10. Contractor contact (name, phone, and/or fax for the person to contact with billing questions);
11. Contractor remittance address;
12. Description of delivered product(s) or service; and
13. Total amount due for delivered product(s) or service.

### The contractor understands and agrees that the invoice shall:

- ┘ Include only charges for service described in contract or Purchase Order and in accordance with payment terms and conditions set forth in the contract or purchase order;
- ┘ Not include any future work but will only be submitted for completed service, unless otherwise authorized in writing by the user agency; and
- ┘ not include sales tax or shipping charges (unless otherwise stipulated in the contract or purchase order).

Payment: The contractor agrees that timeframe for payment (and any discounts) begins when the state is in receipt of a correct invoice meeting the minimum requirements above. It shall be the responsibility of the "bill to" agency to make payment in accordance with the Prompt Payment Act of 1985. Any questions concerning payment should be addressed to the "bill to" agency and not to the Purchasing Division.

## **18. Contract Cancellation**

Termination for Convenience: The State may terminate this contract without cause. Said termination shall not be deemed a breach of contract by the State. The State shall give the vendor/contractor at least ninety (90) days written notice before the effective cancellation date.

The vendor/contractor shall be entitled to receive compensation for product(s) shipped or services satisfactorily completed as of the cancellation date, but in no event shall the state be liable to the vendor/contractor for compensation for any product(s) or services which have not been rendered.

Upon such termination, the vendor/contractor shall have no right to any actual general, special, incidental, consequential, or any other claims whatsoever of any description or amount.

Termination for Cause: If the vendor/contractor fails to fulfill its obligations under this contract in a timely or proper manner, or if the vendor/contractor violates any terms of this contract, the State shall have the right to immediately terminate the contract upon written notice of intent to cancel. The State shall have the right to withhold payment 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.

At the end of any fiscal year any contract may be canceled by the state without notice, in the event that funds to support the contract become unavailable.

The vendor/contractor will be required to honor all purchase orders that were prepared and dated prior to the date of the termination, if received by the vendor/contractor within a period of thirty (30) days following the date of cancellation.

## **19. Subcontracting: Responsibilities and Liabilities, Bond Required If Subcontracting**

Based on Tennessee Code Annotated 12-4-201, the vendor/contractor shall not enter into any subcontract for services, prior to or following award, without the written consent of the Deputy Commissioner, Department of General Services, Purchasing Division. It is also understood and agreed that no contract may be assigned, sublet, or transferred without the written consent of the Assistant Commissioner, Department of General Services, Purchasing Division. The awarded vendor/contractor is responsible for work, service, performance, injuries of employees and payment to the subcontractor.

The subcontractor shall be required to register with Purchasing Division and provide proof of insurance in accordance with the insurance term and condition, if insurance is required.

All anticipated or actual costs incurred for subcontracting must be included in the bid price per line item. The vendor/contractor can only invoice for actual bid prices per line item; regardless of how much it has agreed to pay the subcontractor.

The successful bidder(s) will be required to furnish a Labor and Material Surety Bond issued by a surety company licensed to do business in the State of Tennessee in the amount of twenty-five (25) % of the total contract amount. The Labor and Material Surety Bond shall be issued by a surety company licensed to do business in the State of Tennessee or an Irrevocable Letter of Credit from a state or national bank or state or federal savings and loan association having its principal office in Tennessee; or any state or national bank or state or federal savings and loan association that has its principal office outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits may be accepted by the Purchasing Division in lieu of a performance bond. The terms and conditions of any letter of credit shall be subject to the approval of the public official named in the contract. The form of such letter of credit shall be provided by the bank or savings and loan association and may be based on either the uniform commercial code, Tennessee Code Annotated, Title 47, Chapter 5, or the ICC Uniform Customs and Practice for Documentary Credits (UPC 500). All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter.

The Labor and Material Surety Bond or Irrevocable Letter of Credit shall be furnished to the Purchasing Division within ten (10) business days after the request. The Labor and Material Surety Bond or Irrevocable Letter of Credit will insure that the contractor will pay for all labor and materials used by the contractor, or any immediate or remote subcontractor under the contractor, in such contract, in lawful money of the United States.

In the event that the Bidder does not indicate that they would be subcontracting and therefore no bond was received, the state reserves the right to request a Labor and Material Surety Bond from the vendor/contractor in the event that a subcontractor submits a claim against the vendor/contractor's surety bond to the Purchasing Division due to non-payment. If requested, the vendor/contractor will be required to submit a Labor and Material Surety Bond in the amount specified in the request letter within ten (10) business days.

## **20. Service Contracts: Conflict 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.

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**STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES  
PURCHASING DIVISION**

**INVITATION TO BID**

**The following shall be completed by the bidder. The following is a list of acceptable responses:**

1. The bidder can copy the document to their computer, fill out the form and re-attach it to the bid.
2. The bidder can attach or send its company's diversity business policies with the bid.
3. The bidder can attach or send responses to the questions and Section 1-MBE Information and the detailed MBE/WBE/SBE Utilization Plan with the bid.

**EFFORTS TO ACHIEVE DIVERSITY BUSINESS ENTERPRISE PARTICIPATION**

The Governor, in an effort to expand economic opportunities for small businesses and businesses owned by minorities and women in Tennessee, issued Executive Order Number 14 on December 8, 2003, which created the Governor's Office of Diversity Business Enterprise (Go-DBE). In 2004, to further facilitate the State's efforts to promote greater participation by minority owned, woman owned and small businesses in its procurement and contracting opportunities, the General Assembly passed legislation amending Tennessee Code Annotated 12-3-801 through 808 establishing the "Tennessee Minority Owned, Woman Owned and Small Business Procurement and Contracting Act." To coordinate this effort, Go-DBE and the Department of General Services' Purchasing Division have implemented the following procedure:

The vendor or prime contractor should contact appropriate sources within its geographic area to identify qualified minority owned, woman owned and small businesses for this purpose. If needed, the Governor's Office of Diversity Business Enterprise can provide a list of minority owned, woman owned and small businesses who provide an array of services or a vendor may advertise in a newspaper with one or more wide-circulation publications to enhance the solicitation of proposals from minority owned, woman owned and small businesses.

To assist you in your effort to seek and solicit the participation of minority owned, women owned or small businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <http://www.tennessee.gov/businessopp/regdivcomp.html>; or by calling the Governor's Office of Diversity Business Enterprise toll free at 866-894-5026. If you are currently utilizing a minority owned, women owned or small business that is not listed in the State's directory, please provide its company name, address and telephone number in the space provided. We will assist them in registering with the Governor's Office of Diversity Business Enterprise.

Please complete the attached form and include all pertinent documentation regarding your company's efforts to achieve diversity business participation. This information must be submitted with the bid document and monthly thereafter until a reasonable level of diversity business participation is achieved.

GOOD FAITH EFFORTS UNDERTAKEN BUT NOT LIMITED TO THE FOLLOWING ACTIONS  
(PROVIDE SPECIFIC DOCUMENTATION FOR EACH EFFORT CHECKED)

- 1) \_\_\_ Contacted diversity businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on the Go-DBE Directory. (Provide a list of minority, women, and small businesses contacted. Indicate whether diversity business responded or followed up to your solicitation request.)
  - 2) \_\_\_ Make the specifications and requirements of this procurement available for review by prospective diversity businesses at least ten (10) days before the bid or proposals are due.
  - 3) \_\_\_ If possible, breaking down or combining elements of work into economically feasible units to facilitate diversity business participation.
  - 4) \_\_\_ Work with minority, women and small business trades, community organizations, or minority, women or small business organizations identified by Go-DBE to obtain diversity businesses participation, whenever possible.
  - 5) \_\_\_ If possible, provide assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for diversity business subcontractors.
  - 6) \_\_\_ Negotiate in good faith with interested diversity businesses and not reject them as unqualified without sound reasons based on lack of qualification should have the reasons documented in writing.
  - 7) \_\_\_ If possible, provide assistance to an otherwise qualified diversity business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted diversity businesses in obtaining the same unit pricing with the bidder's suppliers in order to help diversity businesses in establishing credit.
  - 8) \_\_\_ If possible, negotiate joint venture and partnership arrangements with diversity businesses in order to increase opportunities for diversity business participation on this procurement.
  - 9) \_\_\_ If possible, provide quick pay agreements and policies to enable diversity businesses and suppliers to meet cash-flow demands.
  - 10) \_\_\_ Other effort. (Please provide details of efforts made to obtain diversity participation on the procurement).
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**SECTION 1 - MBE INFORMATION:** In order to achieve the Diversity Business participation, certified **MINORITY-OWNED, WOMEN-OWNED AND SMALL-OWNED BUSINESSES** are expected to participate in the following manner.

MBE/WBE/SBE Firm	Description of Work (MBE/WBE/SBE)	Projected Contract Amount and Award Date	Contract Schedule Start Date	Contract Payment Schedule	Project Completion Date
Name: Address: City: State/Zip Code: Telephone No.					
Name: Address: City: State/Zip Code: Telephone No.					
Name: Address: City: State/Zip Code: Telephone No.					

**CONSULTANT/CONTRACTOR DETAILED MBE/WBE/SBE UTILIZATION PLAN**

Consultant/Contractor Name:		
Invitation to Bid/Contract Number:		Bid Date:
Address:	City:	State: Zip Code:
Official Authorized Signature:		Title:
Project Owner Name:		Project No.
Address:	City:	State: Zip Code:
Authorized Representative:		Title:
Contract Description:  (Brief Description of Project)		

**PROJECTED MBE/WBE/SBE BID SUMMARY**

	%	Amount		Amount
1. Total Dollar Value of the Contract	100%	\$	5. Total MBE Dollar Amount Met	\$
2. MBE Goal Applied to the Contract	____%	\$	6. Total WBE Dollar Amount Met	\$
3. WBE Goal Applied to the Contract	____%	\$	7. Total MBE Dollar Amount	\$
4. MBE/WBE Combined Totals	____%	\$	8. Total WBE Dollar Amount Unmet	\$

**Go-DBE PROGRAM USE ONLY**

		Date Approved	Date Disapproved	Initials
MBE (%)	EEO-Minorities (%)			
WBE (%)	EEO-Female (%)			