

**TO:** Ms. Krista Lee Carsner, Executive Director, Fiscal Review Committee

**FROM:** Chris Romaine, Department of General Services

**DATE:** January 22, 2019

**SUBJECT:** Contract Approval Request

The Department of General Services respectfully requests approval of the attached sole source contract with [REDACTED] [REDACTED] formerly the [REDACTED] division of [REDACTED] is to provide service and maintenance to all [REDACTED] equipment used by the Department of General Services Postal Division. [REDACTED] is the only company who can provide this service as [REDACTED] does not sell parts or service through 3rd party companies.

Please contact me at (615) 979-6700 with any questions or concerns. We appreciate your consideration of this matter.

**Attachments:**

- Attachment A: Supplemental Document
- Attachment B: Special Contract Request
- Attachment C: Proposed Contract
- Attachment D: Rule Exception Request

*Contact Name:	Tammy Golden	*Contact Phone:	615-741-4199		
*Presenter's name(s):	Tammy Golden				
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	4/15/2019	*Current or Proposed End Date:	4/14/2022		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of General Services				
*Division:	Postal Division				
*Date Submitted:	1/22/2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	[REDACTED]				
*Current or Proposed Maximum Liability:	\$3,140,411				
*Estimated Total Spend for Commodities:	\$3,140,411				
<b>*Current or Proposed Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2019	FY:2020	FY:2021	FY:2022	FY2023	FY2024
\$157,020	\$628,082	\$628,082	\$628,082	\$628,082	\$471,061
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from Edison)</i>					
FY: 2019	FY:2020	FY:202	FY:2022	FY2023	FY2024
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
<b>IF</b> surplus funds have been carried forward, please give the reasons 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:					
<b>*Contract Funding Source/Amount:</b>					
	\$3,140,411	Federal:			

State:			
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole Source Contract	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$3,140,411 This was determined based on actual spend during the previous sole source contract with the same supplier for the same services.	
*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.		N/A	



# MEMO

**TO:** Chris Salita - Director of Sourcing  
Kevin Bartels - Sourcing Staff Attorney

**FROM:** Douglas Whitcomb – Sourcing Analyst

**DATE:** 5/7/2018

**SUBJECT:** Recommendation of Proprietary Purchase

Special Contract Request (cy18-10926) is for a \$4,000,000.00 (5) year contract with [REDACTED] to provide support and maintenance for (5) high speed stand-alone mailing machines (Model [REDACTED], (1) high speed stand-alone mailing machine ([REDACTED]), (5) high speed intelligent inserters ((1) [REDACTED] inserting system, (2) [REDACTED] Inserting Systems, (2) [REDACTED] inserting systems), (1) [REDACTED] High speed letter sorter, (1) [REDACTED] Tracking System with associated hand-held scanners and (1) Postal Mail Management System.

The equipment and its software are manufactured by [REDACTED] and are covered under one or more copyrights. [REDACTED] has the exclusive rights to maintain the equipment and does not allow third parties to maintain any of the aforementioned products.

Sourcing Analyst recommends the approval of this sole source contract.

**Chris Salita**  
Digitally signed by Chris Salita  
 DN: cn=Chris Salita, o=CPO, ou=32101,  
 email=Chris.Salita@tn.gov, c=US  
 Date: 2018.05.14 11:16:56 -05'00'

Director of Sourcing

Date

**Kevin C. Bartels**  
Digitally signed by Kevin C. Bartels  
 DN: cn=Kevin C. Bartels, o=CPO, ou,  
 email=Kevin.C.Bartels@tn.gov, c=US  
 Date: 2018.05.08 14:45:55 -05'00'

Staff Attorney – Sourcing

Date



<b>Request Tracking #</b>	<b>32101-41718</b>
<b>9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request</b> – <i>information technology (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>10. eHealth Pre-Approval Endorsement Request</b> – <i>health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>11. Human Resources Pre-Approval Endorsement Request</b> – <i>state employee training</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
<b>13. Maximum Contract Cost – with ALL options to extend exercised</b>	<b>\$ 4,000,000</b>
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	The previous [REDACTED] maintenance contract had a maximum liability of \$4,000,000
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	Pricing to be comparable to current sole source contract for the same services.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Phone and Email
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	Without the sole source maintenance contract the Postal equipment supplied by [REDACTED] could breakdown delaying processing of our customer's extremely important documents.
<b>19. Proposed contract impact on current State operations</b>	This sole source contract will allow the Postal division to continue providing important services to the citizens of Tennessee.
<b>20. Justification –</b> Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	[REDACTED] is the only company who can provide this service as they do not sell parts or service through 3rd party companies.
<b>For No Cost and Revenue Contracts Only</b>	
<b>21. What costs will the State incur as a result of this contract? If any, please explain.</b>	
<b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>	
<b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<b>24. Summary of State responsibilities under proposed contract</b>	
<b>For Sole Source and Proprietary Procurements Only</b>	

Request Tracking #	32101-41718
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	[REDACTED] has been in business for over 90 years and employees 14,000 people around the world.
26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Sole Source ITB Name/Address: [REDACTED] [REDACTED] [REDACTED]
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	[REDACTED] is the only contractor that can supply these maintenance services.
<b>Signature Required for all Special Contract Requests</b>	
<p><b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"> <div style="text-align: center;">  </div> <div style="text-align: center;"> <p>Thomas W. Chester  cn=Thomas W. Chester, o,  ou=Department of General Services,  email=thomas.w.chester@tn.gov,  c=US  2018.05.02 21:32:59 -05'00'</p> </div> <div style="text-align: right;"> <p>Date: <b>5/3/2018</b></p> </div> </div> <p>Signature: _____</p>	



**MEMORANDUM**

**TO:** Robert E. Oglesby, AIA, Commissioner  
Department of General Services

**FROM:** Phil Page, Director *Phil Page*  
Postal Services

**DATE:** April 30, 2018

**SUBJECT:** Sole Source Equipment Maintenance

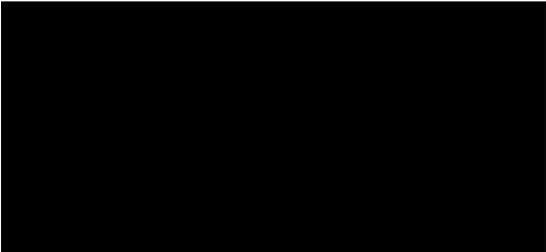
The Postal Services Division is in process of procuring a Sole Source Maintenance contract for our [REDACTED] mail processing equipment. [REDACTED] is the only company who can provide this service as they do not sell parts or service through 3<sup>rd</sup> party companies.

This contract would cover (5) high speed stand-alone mailing machines ([REDACTED]), (1) high speed stand-alone mailing machine ([REDACTED]), (5) high speed intelligent inserters ( (1) [REDACTED] inserting system, (2) [REDACTED] Inserting Systems, (2) [REDACTED] inserting systems), (1) [REDACTED] High speed letter sorter, (1) [REDACTED] Tracking System with associated hand-held scanners and (1) Postal Mail Management System.

Without this sole source contract, this equipment would quickly breakdown, leaving us in the position of waiting four (4) hours for a service technician to arrive on-site, delaying processing of our customers' extremely important documents.

Thank you for your consideration and support of this request.

Cc: Tammy Golden, Assistant Commissioner



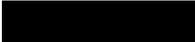
April 10, 2018

**To:** State of Tennessee

**From:** 

**Re:** Sole Source Provider - Department of General Services.

 Document Messaging Technologies is a sole source parts and software provider for all of its products.  does not operate through any dealerships or third parties within the United States.

 is the only vendor which can provide maintenance and copyrighted software updates on  inserters or OCR sorting equipment which includes the IMB Software.  does not sell original equipment, parts, consumables, solvents, inks, etc through any distributors within the United States.

If you have any questions, please feel free to contact me.

Sincerely,

  
Customer Service Manager



 <b>CONTRACT</b> (fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)					
<b>Begin Date</b> 4/15/2019		<b>End Date</b> 4/14/2022		<b>Agency Tracking #</b> 32101-52518	
<b>Contractor Legal Entity Name</b> [REDACTED]					<b>Edison Record ID</b>
<b>Contractor Legal Entity Name</b>					<b>Edison Vendor ID</b> 223567
<b>Goods or Services Caption</b> (one line only) Mailroom Equipment Maintenance					
<b>Contractor</b> <input checked="" type="checkbox"/> Contractor			<b>CFDA #</b>		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2019	\$157,020.58				\$157,020.58
2020	\$628,082.32				\$628,082.32
2021	\$628,082.32				\$628,082.32
2022	\$628,082.32				\$628,082.32
2023	\$628,082.32				\$628,082.32
2024	\$471,061.74				\$471,061.74
<b>TOTAL:</b>	<b>\$3,140,411.59</b>				<b>\$3,140,411.59</b>
<b>Contractor Ownership Characteristics:</b>					
<input type="checkbox"/> Minority Business Enterprise (MBE):					
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input checked="" type="checkbox"/> Other: Corporation					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection			Describe the competitive selection process used		
<input checked="" type="checkbox"/> Other			Approved Sole Source		
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
<b>Speed Chart</b> (optional)			<b>Account Code</b> (optional)		

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF GENERAL SERVICES  
AND**

This Contract, by and between the State of Tennessee, Department of General Services ("State") and [REDACTED] ("Contractor"), is for the provision of Mailroom Equipment Maintenance, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation  
Contractor Place of Incorporation or Organization: Delaware  
Contractor Edison Registration ID # 0000223567

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2.. Contractor shall furnish all service and maintenance of all listed equipment at the customer site, to consist of cleaning, lubricating (if needed), adjusting and replacing parts when needed. The listed equipment is in attachment B. This will cover all daily service requests, preventative and remedial maintenance. Diagnostic services required to isolate any and all malfunctions must be included.
- A.3. Contractor shall provide all parts (except consumables) to be replaced at no charge. If a specific component requires more than four (4) maintenance calls within a thirty (30) consecutive calendar day period, the Contractor must replace the defective component at his expense with equipment warranted equivalent to new.
- A.4. Contractor shall perform requested service and preventive maintenance (PM) during the contract period per manufacturer's recommendation at no additional charge. Such work is to be performed during non-production time unless otherwise approved by postal management. No additional charges for second shift if needed (5:00 PM – 10:00 PM) Monday – Saturday.
- A.5. Contractor shall have minimum equivalent of two (2) full time dedicated factory trained service technicians on-site Monday – Friday to cover the span of time from 6:00 AM to 5:00 PM. Each service technician cannot exceed 8 hours of work time during this daily period of time. Contractor shall also provide a minimum of one (1) factory trained technician on Saturday's from 5:00 AM – 12:30 PM on an as need basis during special production situations. The State will provide a minimum of twenty-four (24) hours' notice for Saturday coverage.
- A.6. The State will not pay overtime pay except for work performed after 10:00 PM and prior to 6:00 AM Monday – Saturday, anytime on Sunday, and the following holidays: Christmas Day, New Year's Day, Thanksgiving Day, July 4th and Memorial Day.
- A.7. Contractor must provide on-site inventory of consumable parts and spares based upon factory specification and historical usage, which is monitored and regulated on a monthly basis.
- A.8. Where applicable, the Contractor must update zip code and tray tag directories according to USPS schedule(s). Any United States Postal Service (USPS) rate or regulation changes, as well as any vendor software improvements, shall be the sole responsibility of the Contractor to provide and install.
- A.9. All repairs shall be effected by replacing plug-in modules or field replaceable units. The Contractor shall not attempt to de-solder any component from a printed wiring board for replacement except temporarily, in case of a major outage, with the State's permission. Only new standard parts or parts warranted equivalent to new, shall be used in effecting repairs.

- A.10. Contractor's replacement personnel shall be provided at no additional charge in the absence of the primary dedicated service technician(s) due to illness, vacation, training, etc.
- A.11. In the event that several pieces of equipment are out of service and cannot be restored by the on-site technician within a time frame which will not impeded the State's production schedule, additional Contractor personnel sufficient to restore all equipment to operational status shall be provided at no additional charge. A determination as to whether or not additional personnel are required shall be made within one (1) hour of notification to the district manager of customer service. If the problem is not diagnosed within one (1) hour, [REDACTED] Customer Service Representative (CSR) is to call the district inserter specialist and technical operations in Danbury for assistance. If the problem is not diagnosed within three (3) hours, the CSR and the district inserter specialist are to call the region technical specialist for assistance, and must also notify the local area manager of production mail. If the problem is not diagnosed within five (5) hours, the CSR and district inserter specialist are to notify the national production mail operations at 1-800-[REDACTED] for technical advice. In addition, the division production mail manager of customer service must be notified. If the problem is not diagnosed within eight (8) hours, the national director of production mail customer service must be notified.

All equipment is to be up and running within one (1) hour or less from technician's arrival when possible. Also, preventative maintenance is to be performed on a scheduled basis after 4:30 PM each day unless otherwise approved by postal management to be performed during regular business hours.

In the event this escalation clause must be exercised, the equipment is to be back up and running within eight (8) business hours or less from the start of the escalation procedures.

- A.12. Meters and Mail Processing Equipment. The State may order solutions that include a postage meter and a User Interface Control (UIC) to be used in connection with Contractor mail processing equipment. In accordance with USPS (United States Postal Service) regulations, Contractor does not provide the actual postage meters or UIC, so the meter and UIC, together with any software installed on the meter must be ordered separately from an authorized postage meter vendor. In particular, Contractor offers solutions using Infinity Meters. Infinity Meters are comprised of an Infinity Base, provided by Contractor, to interface with its mail production systems. However, Infinity Meters also require an Infinity UIC which is only available from [REDACTED] and must be obtained under the existing agreement.
- A.13. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be one (1) year from time of installation. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.14. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on 4/15/2019 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

- B.1. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period 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 a total of sixty (60) months.
- B.2. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three million one hundred forty-thousand four hundred eleven dollars and fifty-nine cents (\$3,140,411.59) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
  - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Equipment maintenance and repair, [REDACTED] mailroom equipment at dgs state postal services, tn tower, year 1	\$50,542.36 /MO
Equipment maintenance and repair [REDACTED] mailroom equipment at dgs state postal services, tn tower, year 2	\$51,553.21 /MO

Equipment maintenance and repair, [REDACTED] mailroom equipment at dgs state postal services, tn tower, year 3	\$52,455.21 /MO
Equipment maintenance and repair, [REDACTED] mailroom equipment at dgs state postal services, tn tower, year 4	\$53,242.22 /MO
Equipment maintenance and repair, [REDACTED] mailroom equipment at dgs state postal services, tn tower, year 5	\$53,907.75 /MO
Hour wage, After Hours (10:00PM-6:00AM) Service Performed Monday thru Saturday	\$225.00 /HR
Hour wage, Weekend Service, (6:00AM-5:00PM) Sunday or Holidays	\$450.00 /HR

c. Vendor invoices are to be itemized by specific equipment listed in this contract and serviced during contract Term including an associated cost of maintenance for each line item. Total of line items must be equal to total amount of the invoice.

d. The State is to be billed monthly for services rendered for the prior month.

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Office of Administrative Services  
Tennessee Tower, 22nd Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
[OAS.ElectronicInvoices@tn.gov](mailto:OAS.ElectronicInvoices@tn.gov)

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: The Department of General Services, Office of Administrative Services;
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
  - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
  - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
  - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

#### **D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Chris Romaine | Program Manager  
Office of Administrative Services  
Tennessee Tower, 22nd Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
p. 615-979-6700  
chris.romaine@tn.gov

The Contractor:

[REDACTED]  
Customer Service Manager  
[REDACTED]  
Telephone # [REDACTED]

With a copy to:  
[REDACTED]

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract

providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes attachments A and B
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than five million dollars (\$5,000,000) per occurrence or claim and five million dollars (\$5,000,000) annual aggregate, covering all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

- 2) Such coverage shall include data breach response expenses, in an amount not less than five million dollars (\$5,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including cyber theft and extortion if not provided as part of the Cyber Liability Insurance required by subsection d., above. The policy must not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate.
- 3) This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor’s subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor’s subcontractors and that are subject to tax.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract’s other terms and conditions.
- E.2. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor’s use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.3. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.4. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding (“MOU”), not an amendment.
  - a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor’s written proposal shall include:

- (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
  - (2) Any pricing related to the new lines, items, or options;
  - (3) The expected effective date for the availability of the new lines, items, or options; and
  - (4) Any additional information requested by the State.
- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
  - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
  - d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

**IN WITNESS WHEREOF,**

**[REDACTED SIGNATURE]** :

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**CONTRACTOR SIGNATURE**

**DATE**

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

**DEPARTMENT OF GENERAL SERVICES:**

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**CHRISTI BRANSCOM, COMMISSIONER**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

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

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

## Listed Equipment

### Model/Serial Number

1	[REDACTED]
1	Workstation
1	[REDACTED]
1	SERVER RACK Hardware
1	SERVER RACK Software
1	[REDACTED]
22	Handheld Scanners
1	[REDACTED]
1	[REDACTED]
1	SINGLE TIER SORTER
1	(2) CSR's (Monday - Friday)
1	Other Coverage Needed

### Sorters.....

[REDACTED]

### Inserters.....

[REDACTED]

**Mail Management System....**



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**All equipment is housed:  
1<sup>st</sup> Floor, WRS Tennessee Tower  
312 Rosa L. Parks Ave  
Nashville, TN 37243**

# Rule Exception Request

Use this document to request changes to Central Procurement Office templates, policies, or other procurement documents or to modify the “necessary contract clauses” identified in Tenn. Comp. R. & Reg. 0690-03-01-.17 (“CPO Rule 17”). Complete this document in conformity with CPO Rule 17, which is available [here](#). Send the completed document in PDF format to: [Agsprs.Agsprs@tn.gov](mailto:Agsprs.Agsprs@tn.gov). All Rule Exception Requests are subject to review and approval by the Chief Procurement Officer. Rule Exception Requests that propose to modify any of CPO Rule 17’s necessary contract clauses shall be subject to review and approval by the Comptroller of the Treasury. Note: Any change to the template language regarding the Limitation of Contractor’s Liability shall be submitted using the Limitation of Contractor’s Liability Request.

**APPROVED**  
 Kevin C. Bartels for  
 Michael F. Perry  
Digitally signed by Kevin C. Bartels for Michael F. Perry  
 DN: cn=Kevin C. Bartels for Michael F. Perry, o=CPO, ou, email=Kevin.C.Bartels@tn.gov, c=US  
 Date: 2019.01.16 12:52:03 -06'00'  
 CHIEF PROCUREMENT OFFICER

**APPROVED**  
 Don Ivancic on behalf of  
 Comptroller Justin P.  
 Wilson  
Digitally signed by Don Ivancic on behalf of Comptroller Justin P. Wilson  
 Date: 2019.01.18 08:54:51 -06'00'  
 COMPTROLLER OF THE TREASURY

<b>Agency request tracking #</b>	32101-132019
<b>1. Procuring Agency</b>	Department of General Services
<b>2. Edison contract ID #</b>	TBD
<b>3. Contractor or Grantee</b>	[REDACTED]
<b>4. Contract’s Effective Date</b>	3/28/2019
<b>5. Contract or grant contract’s Term (with ALL options to extend exercised)</b>	60 months
<b>6. Contract’s Maximum Liability (with ALL options to extend exercised)</b>	\$ 3,140,411.59
<b>7. Citation and explanation of the rule(s) for which the exception is requested</b>	
<p>0690-03-01-.17 NECESSARY OR PROHIBITED CONTRACT CLAUSES AND RULE EXCEPTIONS.</p> <p>(1) The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.</p> <p>(4) Rule Exception Procedure. The Central Procurement Officer may approve exceptions to these Rules or Central Procurement Office Policy as follows:</p> <p>The Procuring Agency may request, and the Chief Procurement Officer may authorize or initiate an amendment to an existing contract or a modification of a solicitation, at any stage of the procurement or contract negotiation process, in circumstances where the Chief Procurement Officer determines that doing so is in the best interests of the State.</p> <p>(b) If the Procuring Agency considers it necessary to modify a necessary contract clause, it shall submit a request to the Chief Procurement Officer to modify a necessary contract clause.</p> <p>1. The request for modification of a necessary contract clause shall contain justification that addresses the following:</p> <p>(i) The text of the new clause sought to be used;</p>	

- (ii) If applicable, the risks to the State created by the new clause, and the impact on the State by allowing the new clause;
- (iii) The conditions in the market place that justify modification of the necessary contract clause; and
- (iv) The anticipated impact on the State's procurement if modification to the necessary contract clause is not allowed.

The Chief Procurement Officer shall have the authority to approve the language submitted or may authorize acceptance of the modification under alternative language. Any approval shall be in writing and detail the specific alternative language approved

- 8. Description of requested changes** If adding new provisions or modifying existing provisions, insert the new or modified provisions in their entirety. Please provide red-lines or track changes to highlight any deviations from template language.

**Warranty.** ~~Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be one (1) year from time of installation. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services.~~ The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

- 9. Scope of Goods or Services Caption:** Mailroom Equipment Maintenance

- 10. Justification** The major postal equipment components have already been installed and established. This contract is for the maintenance of these established machines. This maintenance often includes small parts that need to be modified or replaced and those parts can be warrantied for a year. This was also the agreed upon warranty during the previous ITB contract.

**Signature of Agency head or designee and date**



Thomas W. Chester  
 cn=Thomas W. Chester, o,  
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