

March 2, 2018

Senator Ken Yager
Chairman, Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN

Attn: Ms. Krista Lee

Dear Chairman Yager:

Please find attached, for the Fiscal Review Committee's consideration, documentation of a Special Contract Request for a Sole Source contract for Crawford Technologies software and support services.

This software and the associated services are used to operationally consolidate and automate print and postal documents services that are offered to multiple agencies by the Department of General Services (DGS). This software also creates and reports on quality control steps that improve the level of services that DGS offers.

Crawford Technologies USA Inc. is the only source for the combination of software and support services required by this contract.

The Department of Finance and Administration, Strategic Technology Solutions, respectfully requests to be placed on the agenda at the next Fiscal Review Committee meeting.

Thank you for your consideration of this request.

Sincerely,

Andy Kidd
Director of Business Operations

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	John Grove	*Contact Phone:	615-253-2516		
*Presenter's name(s):	Andy Kidd				
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>	31701-03244		
*Original or Proposed Contract Begin Date:	5/15/18	*Current or Proposed End Date:	5/14/23		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Finance and Administration				
*Division:	Strategic Technology Solutions				
*Date Submitted:	3/2/18				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Crawford Technologies USA Inc.				
*Current or Proposed Maximum Liability:	\$425,000				
*Estimated Total Spend for Commodities:					
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2018	FY: 2019	FY: 2020	FY: 2021	FY: 2022	FY: 2023
\$35,000	\$150,000	\$71,000	\$55,000	\$56,000	\$58,000
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:			
State:		Federal:	
<i>Interdepartmental:</i>	\$425,000	<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:		Interdepartmental revenue is revenue that STS obtains from other State departments. Some of our revenue is derived from entities outside of state government. This is classified as current services revenue.	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$425,000 The cost estimate was based on the most recent quote from Crawford, which is included with the supplemental documentation. In addition to ongoing maintenance, the estimate also includes dollars for additional anticipated software purchases.	
*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.		Crawford Technologies USA Inc. is the only source for the combination of software and support services required by this contract.	

**Crawford Software Services
Line Items**

Line Item Description	Price
Operations Express – Server License (Production)	\$40,000.00 / Year
Operations Express – Server License (Non-Production)	\$10,000.00 / Year
Additional individual PDL output or input – Server License (Production)	\$15,000.00 / Year
Additional individual PDL output or input – Server License (Non-Production)	\$3,750.00 / Year
DataPrep – Server License (Production)	\$10,000 / Year
DataPrep – Server License (Non-Production)	\$2,500.00 / Year
PRO Concatenator – Server License (Production)	\$10,000.00 / Year
PRO Concatenator – Server License (Non-Production)	\$2,500.00 / Year
PRO Workflow Connector – Mainframe License (Production)	\$14,000.00 / Year
PRO Workflow Connector – Mainframe License (Non-Production)	\$3,500.00 / Year
PRO Workflow JES – Mainframe License (Production)	\$15,000.00 / Year
PRO Workflow JES – Mainframe License (Non-Production)	\$3,750.00 / Year
PRO Designer (Pricing Per Seat 1-5, Production)	\$7,500.00 / Seat
PRO Designer (Pricing Per Seat 1-5, Non-Production)	\$1,875.00 / Seat
Training/Professional Services (Provided On-Site at State Facility)	\$250.00 / Hour
Training/Professional Services (Provided Off-Site)	\$200.00 / Hour
Annual Maintenance	20% of the annual cost for each software item licensed by the State



STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : John Grove
E-mail : john.grove@tn.gov

DATE : February 14, 2018

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # 31701-03244 – Crawford Long-Term Contract

State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable
 Not Applicable

STS Endorsement Signature & Date:

Mark F. Bengel (by WMH)

Digitally signed by Mark F. Bengel (by WMH)
DN: cn=Mark F. Bengel (by WMH), o=TN Finance & Admin,
ou=Strategic Technology Solutions, email=william.hafley@tn.gov,
c=US
Date: 2018.02.28 15:41:18 -06'00'

Chief Information Officer

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

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

Contracting Agency	Finance and Administration
Agency Contact (name, phone, e-mail)	John Grove, 615-253-2516, john.grove@tn.gov

Applicable RFS # 31701-03244 – Crawford Long-Term Contract**Attachments Supporting Request** (mark all applicable)

Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.

- Solicitation Document
- Special Contract Request
- Amendment Request
- Proposed Contract/Grant or Amendment
- Original Contract/Grant and Previous Amendments (if any)

Information Systems Plan (ISP) Project Applicability

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

IT Director/Staff Name Confirming (required):

- 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.

Crawford Technologies Software, Operations Express is an advanced yet straightforward method for re-engineering and manipulating of existing print streams to consolidate work to fewer devices and enable a variety of operational efficiencies without having to make expensive and time consuming application changes upstream. This contract will provide the necessary software, maintenance, consulting services, and training to support the State's print services.



Friday, January 12, 2018

John M. Grove
ERP Manager
312 Rosa L. Parks 17th Floor
Nashville, TN 37243

RE: CrawfordTech Software

Dear John,

This letter is to confirm that the software provided and installed by CrawfordTech to the State of TN can only be purchased from CrawfordTech. CrawfordTech is the only source for maintenance on the installed software.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ernie Crawford', written in a cursive style.

Ernie Crawford M-EDP
President
Office: (416) 923-0080
Cell: (970) 481-0738
ernie@crawfordtech.com

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

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

APPROVED	APPROVED
CHIEF PROCUREMENT OFFICER	DATE
COMPTROLLER OF THE TREASURY	DATE

Request Tracking #	31701-03244
1. Contracting Agency	F&A
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	John Grove, 615-253-2516, john.grove@tn.gov
4. Brief Goods or Services Caption	Crawford Technologies software and support services
5. Description of the Goods or Services to be Acquired	Crawford Technologies Software, Operations Express is an advanced yet straightforward method for re- engineering and manipulating of existing print streams to consolidate work to fewer devices and enable a variety of operational efficiencies without having to make expensive and time consuming application changes upstream. This contract will provide the necessary software, maintenance, consulting services, and training to support the State's print services.
6. Proposed Contractor	Crawford Technologies USA Inc.
7. Name & Address of the Contractor's principal owner(s) <i>– NOT required for a TN state education institution</i>	22 Depot Street, PO Box 5198 Potsdam, NY13676

Request Tracking #	31701-03244
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request <i>– information technology (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request <i>– state employee training</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 425,000
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	The agency based the costs on a current vendor quote, and the expected adoption of the software.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	The vendor costs for the State of TN did not exceed an average of rates charged to other customers the vendor is doing business with.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	See attached documents.
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	This software is used to operationally consolidate and automate print and postal documents services that are offered to multiple agencies by the Department of General Services (DGS). This software also creates and reports on quality control steps that improve the level of services that DGS offers.
19. Proposed contract impact on current State operations	Improve the efficiency and quality of critical agency print and postal services offered by DGS.
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	Crawford Technologies USA Inc. is the only source for the combination of software and support services required by this contract.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	

Request Tracking #	31701-03244
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	Crawford has been successfully providing these services to the State since January of 2017.
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 Name/Address: JYACC Inc 24025 Park Sorrento Ste 405 Calabasas, CA 91302 This purchase was made through JYACC to correct an inappropriate procurement mechanism previously used. JYACC was only a pass-through vehicle to obtain the services. Crawford is the only vendor capable of providing the required maintenance.
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	Crawford Technologies USA Inc. is the only source for the combination of software and support services required by this contract. See attached Sole Source letter.
Signature Required for all Special Contract Requests	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	
Signature: _____	Date: _____

State of Tennessee
Sourcing Event #31701-03244
Specifications
Crawford Technologies Software and Support Services

1.0 Scope

The purpose of this document is to establish an Agency Multi-Year Contract for Strategic Technology Solutions (“STS”) as a vehicle STS to purchase Crawford Technologies Software and Annual Maintenance. In addition, STS may also act on the behalf of State Departments obtain and provide these products to the Departments.

2.0 Definitions

Account Manager. The term “Account Manager” refers to a person who works for a vendor and who is responsible for the management of sales and relationships with new and existing customers.

Annual Maintenance. The term “Annual Maintenance” shall mean the services that the vendor provides to holders of Software Licenses in support of the Software.

Annual Maintenance Subscriber. The term “Annual Maintenance Subscriber” shall mean a User of the Software that has paid the Annual Maintenance fee.

Business Continuity. The term “Business Continuity” shall mean planning and preparation to ensure that an organization can continue to operate in case of serious incidents or disasters and is able to recover to an operational state within a reasonably short period.

Central Processing Unit. The term “Central Processing Unit” shall mean the part of a computer in which operations are controlled and executed.

Core. The term “Core” shall mean the processing unit that receives instructions and performs calculations, or actions, based on those instructions. A set of instructions can allow a software program perform a specific function. Processors can have a single **core** or multiple cores.

Department. The term “Department” refers to each State of Tennessee Department of State government.

Development. The term “Development” shall mean the design and creation of computer software.

Instance. The term “Instance” shall mean a discrete occurrence of a software object, such as an Operating System, operating within a computer environment.

Local-Area Network “LAN”. The term “LAN” refers to a group of computers and associated devices that share a common communications line or wireless link to a server.

Manufacturer. The term “Manufacturer” refers to a company that produces goods.

Patch. The term “Patch” shall mean a piece of software designed to update a computer program or its supporting data, to fix or improve it.

Partition. The term “Partition” shall mean the creation of one or more regions on a hard disk or other secondary storage, so that an operating system can manage information in each region separately.

Perpetual License. The term “Perpetual License” shall mean the irrevocable, non-exclusive right to use the Software in perpetuity. The failure of the User to pay the Annual Maintenance does not affect this right.

Processor. The term “Processor” shall mean is a small chip (electronic component) that resides in computers and other electronic devices. Its basic job is to receive input and provide the appropriate output.

Production Server. The term “Production Server” shall mean a type of server that is used to deploy and host live computer software applications, websites, or Web applications.

Server. The term “Server” refers to a storage device dedicated to storing files.

Staging. The term “Staging” shall mean installing and operating computer application software in a computer environment as a temporary stage where users of the software can test new or revised software components before they are made live.

Software. The term “Software” shall mean a set of instructions and associated documentation that tells a computer what to do or how to perform a task. In this case, the primary Software is Crawford Operations Express (OE); the State may also choose to purchase additional Crawford Software under this Contract.

State. The term “State” refers to the State of Tennessee, including its departments, agencies, and entities that fall under its purview.

Test. The term “Test” shall mean the overall process of executing software components to determine whether the objectives of the software are being met.

Updates. The term “Updates” shall mean software files that contain fixes for problems found by the software’s users or developers.

Vendor. The term “Vendor” means a person or legal entity with the legal capacity to enter into contracts. In this case, the Vendor shall be more specifically defined as Crawford.

Virtual Machine. The term “Virtual Machine” shall mean a software computer that, like a physical computer, runs an Operating System and applications.

3.0 Software Perpetual Licenses

- 3.1** The Vendor shall provide or make available to State staff, through this contract, Perpetual Licenses (the “Licenses”) to the Crawford Software products.
- 3.2** The Vendor shall provide the Licenses under a License model which is per Operating System Instance. On a Partitioned Server, this shall mean that there shall be one (1) Instance per each Virtual Machine (“VM”). On a non-Partitioned Server, there shall be one (1) Instance per Server. The License model shall not be bound by number of Central Processing Units (“CPU”) or Cores.
- 3.3** The State may use Licenses installed on non-Production Servers for Test, Development, Staging, or Business Continuity (“DR”) purposes.
- 3.4** The Vendor shall provide the software through electronic downloads.

4.0 Software Installation

- 4.1** The Vendor shall assist the State with the installation, integration, and configuration of the software.
- 4.2** For basic assistance with the tasks described in Section 4.1 above, such as answering questions and brief guidance, the Vendor shall provide such assistance as a part of Annual Maintenance, which is described in Section 5.0.

- 4.3** However, if the level of assistance exceeds what could be reasonably and efficiently provided via e-mail and/or phone support, the State shall compensate the vendor for such assistance in accordance with the Professional Services terms of Section 6.0.

5.0 Annual Maintenance

- 5.1** The Vendor shall provide Annual Maintenance to holders of Software Licenses that have paid the Annual Maintenance fee.
- 5.2** Annual Maintenance shall include the following services, provided in manner described below:
- a. Technical advice on Software, which shall be available to Annual Maintenance Subscribers
 - b. Such support shall be provided via telephone or e-mail, Monday through Friday, 8:00 AM CST through 5:00 PM CST. The Contractor shall provide a toll-free number for telephone support.
 - c. The support shall include identifying and resolving configuration issues, set-up, operation, troubleshooting, problem resolution, security, and upgrade issues relating to the Software.
 - d. The Vendor shall provide Updates and Patches to Annual Maintenance Subscribers as soon they become available.
 - e. The Vendor shall make all Software documentation available to Annual Maintenance Subscribers electronically.
 - f. Software documentation shall be available to the State electronically.
- 5.4** It is the responsibility of the Vendor to track when the Annual Maintenance previously purchased will expire and to process all paperwork, notify the State, and prepare statements in order to, on a timely basis, make sure that Annual Maintenance does not lapse. The State will also track the above activities and milestones.
- 5.5** The Annual Maintenance fee shall be calculated at twenty percent (20%) of the annual software license cost for each software product license that the State owns. The State shall remit this fee at the beginning of the contract year to which it applies.

6.0 Training and Professional Services

- 6.1** The Vendor shall provide Professional Services, including but not limited to:
- a. Assistance with the installation, integration, and configuration of the Software and any Updates/Patches above and beyond what is available to the State under Section 5, Annual Maintenance, if and when the State requests such assistance.
 - b. Training for State staff in how to use the Software. This training shall be in the form of one-on-one, or small-group training. The Vendor shall also provide training materials and documentation relevant to the training activities.
 - c. The Vendor shall provide the Professional Services in two different modes: (1) on-site, at State facilities; and (2) off-site, at a location of the Vendor's

choosing. The location where the work is performed is determined by the State, in the best interest of the project in question.

- d. The State shall compensate the Vendor Professional Services on an hourly-rate basis.
- e. The State shall not compensate the Vendor for travel time, travel expenses, meals, or lodging.

7.0 Technical Requirements

7.1 The Software shall comply with the following technical requirements:

- a. The Software shall run on Virtual Machine (VM) [REDACTED] servers [REDACTED] 64-bit.
- b. The Operating Systems for Crawford Operations Express (OE) shall support the following:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. [REDACTED]
- vi. [REDACTED]
- vii. [REDACTED]

8.0 Security Requirements

- 8.1 In the event that the operating system is an integral part of the Application, the Contractor agrees to maintain Operating Systems at current, manufacturer supported versions. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- 8.2 The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. The Contractor shall make sure that the Application is at all times fully compatible with a manufacturer-supported Operating System; the State shall not be required to run an Operating System that is no longer supported by the manufacturer.
- 8.3 If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application, to ensure that security vulnerabilities are not introduced.
- 8.4 The Contractor agrees to maintain the Application code so that it will guard against penetration attempts that would bypass authentication and authorization.



Terms and Conditions

Event Number: **31701-00000xxxxx**

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, Central Procurement Office 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.tn.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, Central Procurement Office, 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 Central Procurement Office.

13. The inclusion in any response of a limitation of remedies or liabilities clause may be cause for rejection, unless otherwise specified in this solicitation or in accordance with the provisions of *Tennessee Code Annotated* § 12-3-701 or Central Procurement Office Rules, policies or procedures.

14. All bidders have the right to inspect the bid file, prior to award, upon completion of the evaluation by the Central Procurement Office. 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. § 4-56-103, any actual proposer may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: http://tn.gov/generalserv/cpo/for_bidders.html

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 should be mailed in a properly labeled sealed envelope to the following address:

Department of General Services, Central Procurement Office
Attn: Bidder Services
3rd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102

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, Central Procurement Office, 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 Central Procurement Office on or before the date and hour designated for the bid opening or the bid will be rejected.

20. The Central Procurement Office 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 Procurement Commission. The Procurement Commission 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 Central Procurement Office 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 Central Procurement Office 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.msdssearch.com>.

29. Conflict of Interest: The State may not consider a solicitation response from an individual who is, or within the past six (6) months has been, a state employee. For purposes of this solicitation, an individual shall be considered to be a "state employee" and prohibited from submitting a response to this solicitation for six (6) months after such time as all compensation for salary, termination pay, and annual leave has been paid to such state employee. A contract with or a solicitation response from a company, corporation, or any other contracting entity in which a controlling interest is held by a state employee shall be considered to be a contract with or a solicitation response from a state employee as though the state employee were submitting a response or entering a contract on his or her behalf. Notwithstanding the foregoing, a contract with or a solicitation response from a company, corporation, or any other contracting entity that employs an individual who does not own a controlling interest in such entity and who is, or within the past six months has been, a state employee shall not be considered a contract with or a solicitation response from a state employee and shall not constitute a prohibited conflict of interest.

30. 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.

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

32. Professional Licensure and Department of Revenue Registration: All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Proposer provides for consideration and evaluation by the State as a part of a proposal in response to this solicitation, shall be properly licensed to render such opinions. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer (and Proposer employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Proposer to submit evidence of proper licensure. Before the Contract resulting from this solicitation is signed, the apparent successful Proposer must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Proposer provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

33. 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 Central Procurement Office and Attestation Forms obtained from subcontractor(s).

Note: The contractor shall be required to obtain prior approval to subcontract from the Central Procurement Office.

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 Central Procurement Office. 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/cpo/for_bidders.html

34. Modifications and Amendments: This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).

35. 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.

36. 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.

37. HIPAA Compliance: The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by

the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.

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

Special Terms and Conditions

1. F.O.B. Destination (One-Time Purchase)

F.O.B. Point:

Agency Name:

Address:

2. 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 or disqualified.

3. Bids Requested on Standard State Specifications for Products and/or Services

Unit price bids are requested on products or services that equal or exceed (unless specifications limit the dimensions or brand(s)/model(s) of products to be bid). The absence of detailed specifications or the omission of detail description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used. All interpretations of specifications shall be made from this statement. It is understood that the specifications or references to available specifications shall be sufficient to make the terms of such specifications binding on the vendor/contractor. Bidders must submit for bid evaluation applicable cuts, sketches, descriptive literature, and technical specifications covering the product offered, when applicable. Reference to literature submitted previously will not satisfy this requirement.

Bids requested on architect/engineer/designer specifications, if applicable. Bids are requested per architect/ engineer/designer's specification attached. Bids are to be lump sum and/or unit prices as shown on the price sheet. Any errors or omissions in plans or specifications shall be resolved prior to submission of a bid. Submission of a bid shall constitute agreement and compliance with such specifications and plans. All shop drawings and product sheets required by specifications shall be submitted to architect/engineer/designer prior to fabrication and/or installation.

4. 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.

5. Delivery Time (Days):

All items must be delivered within approximately 14 days after receipt of a purchase order (ARO).

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. 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, Central Procurement Office, reserves the right to make the final determination as to a bidder's ability to perform.

8. Insurance Required

The successful bidder(s) shall procure and maintain for the duration of the contract, at their own cost and expense insurance against claims for injuries to persons or damages to property including contractual liability which, may arise in connection with the performance of the work performed by the contractor, his agents, representatives, employees or subcontractors under the contract.

The insurance carrier(s) must be licensed to conduct business in the State of Tennessee. The insurance will be evidenced by an original or .pdf format document certificate of insurance. The certificate shall list the State of Tennessee as the certificate holder and must list the company name and address on file with the State. Should any of the policy coverage(s) provided have a major change, expire, or be canceled before the expiration date the Contractor shall fax or email vendor.insurance@tn.gov, a copy of their insurer's cancellation notice within two (2) business days of receipt. The State of Tennessee shall be held harmless for any injuries, claims or judgments against the contractor.

Certificates for liability coverages shall name the State of Tennessee Central Procurement Office as an additional insured. The following Insurance Coverages are required:

Workers' Compensation Insurance: a certificate shall be provided which indicates the contractor provides workers' compensation coverage in compliance with the state laws of Tennessee., and Employer's Liability with the following limits:

- E.L. Each Accident\$500,000
- E.L. Disease- Each Employee\$500,000
- E.L. Disease - Policy Limit\$500,000

General Liability and Property Damage Insurance: Comprehensive General Liability Insurance, including but not limited to, bodily injury, property damage, contractual liability, products liability, with combined single limits of \$500,000 per occurrence with a minimum aggregate of \$1,000,000.

The successful bidder(s) shall provide the Central Procurement Office with an original certificate of insurance or .pdf format document as proof of insurance coverage, as stated above, naming the State of Tennessee, Central Procurement Office as additional insured, within ten (10) business days after request. If the certificate of insurance is in .pdf format, it must be received directly from the insurance company.

Upon award, failure to maintain insurance coverage for the duration of the contract period may result in cancellation of the contract. In the event that the insurance policy on file in the Central Procurement Office expires or is canceled, the contractor will be required to cease work until proof of insurance is presented.

9. Negotiations

The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications and/or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.

10. Inspection/Facilities

The Central Procurement Office 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.

11. 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.

12. Bid Rejection

The Central Procurement Office 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 the entire bid.

13. 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.

14. Award Criteria

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

- Ability to Perform
- Conformity to Specifications
- Lowest Composite Score

15. Best and Final Offer

In the interest of obtaining the best value for the State of Tennessee, the State reserves the right to enter into Best and Final Offer (BAFO) negotiations with any bidder on this sourcing event. Bidders should propose their most competitive pricing in their original bid since the State may or may not choose to conduct BAFO negotiations. If the State chooses to exercise its' right to conduct BAFO negotiations, the negotiation(s) will take place after the State evaluates the initial bids. The State reserves the right to conduct multiple BAFO rounds.

For example, if the State exercises its right to enter into BAFO negotiations, it may identify areas of a bid that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications and/or requirements. The State may seek to clarify those identified issues during the BAFO negotiations. Additionally, the State may conduct target pricing and other price or service level negotiations. Note that each clarification sought by the State may be unique to an individual bidder.

The evaluation results along with all other documentation associated with the event will be available for public inspection when the final evaluation is complete and the recommendation for award is issued.

16. 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 obtaining the prior written approval of the Central Procurement Office. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work provided.

17. Damages

If state property is damaged, stolen or lost as a result of vendor/contractor employees' negligence and that property has to be repaired or replaced by the state, the expense for such work or replacement will be deducted from the monies due the contractor. In addition to the foregoing, the State reserves the right to pursue claims for damages through any and all legal remedies available to the State.

18. Confidentiality of Records

Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

19. 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.

20. Intellectual Property

The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice.

This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

21. Warranty

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 general 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.

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.

22. 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, money, 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.

23. 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 of Four Hundred Twenty-Five Thousand Dollars (\$425,000) for a total of Eight Hundred Fifty Thousand Dollars (\$850,000) 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.

24. 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.

25. Software License Warranty

Contractor Grants a license to the State to use all software provided under this Contract in the course of the State’s business and purposes.

26. Software Support and Maintenance Warranty

Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to customers.

27. 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.

STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE

INVITATION TO BID
EFFORTS TO ACHIEVE DIVERSITY BUSINESS ENTERPRISE PARTICIPATION

The Governor's Office of Diversity Business Enterprise (Go-DBE) is the state's central point of contact to attract and assist minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Tennessee service disabled veteran owned business" means a service-disabled veteran owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function with at least a twenty percent (20%) disability that is service-connected meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Tennessee small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis".

For additional program eligibility information visit, http://www.tn.gov/businessopp/program_elig.html.

INVITATION TO BID INSTRUCTIONS

As part of this Invitation to Bid, the Respondent should complete the Diversity Utilization Plan, which begins on the following page. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <http://www.tn.gov/businessopp/regdivcomp.html> or by calling Go-DBE toll free at 866-894-5026.

**RESPONDENT'S
DIVERSITY UTILAZATION PLAN**

Respondent's Company Name:		
Solicitation Event Name:		Event Number:
Respondent's Contact Name:	Phone: ()	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

Estimated level of participation by diversity businesses if awarded a contract pursuant to this ITB:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	Percent of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office. We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____ Date: _____
 Printed Name and Title of Respondent Signatory (above) _____