STATE OF TENNESSEE
DEPARTMENT OF HEALTH
ANDREW JOHNSON TOWER, 5TH FLOOR
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

BILL LEE
GOVERNOR

LISA PIERCEY, MD, MBA, FAAP
COMMISSIONER

September 4, 2019

Krista Lee Carsner, Director
Fiscal Review Committee
Suite G-102, Cordell Hull Building
425 5th Avenue North
Nashville, TN 37243

Mike Perry, Chief Procurement Officer
Central Procurement Office, Department of General Services
22nd Floor, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

Dear Director Carsner and CPO Perry:

The Department of Health, Division of Laboratory Services is requesting approval to establish a three year, sole source contract with two one year options to renew with Eastern Business Forms for the purchase of newborn screening forms using 903 paper. The newborn screening form is used in the required testing of all newborns in Tennessee for metabolic and genetic disorders. 903 paper is designed for the collection of blood from a small stick to the infant's heel; the blood is then applied to the filter paper as part of the submission to the Division for testing.

Eastern Business Forms is the trademark owner of 903 supplies and the sole supplier of 903 paper. 903 paper meets the Clinical & Laboratory Standards Institute (CLSI) guidelines for validation. The estimated total cost of the three year contract is $180,000.00, and the estimated total cost is $300,000.00 for the entire five year term. The contract is state funded.

The Department of Health respectfully submits the above referenced contract for consideration and approval by the Fiscal Review Committee.

Sincerely,

Lisa Piercey, MD, MBA, FAAP
Commissioner

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Paula Gibbs Richard Steece	*Contact Phone:	615-262-6300 615-262-6300
*Presenter's name(s):	Paula Gibbs, Richard Steece		
Edison Contract Number: *(if applicable)*	TBD	RFS Number: *(if applicable)*	N/A
*Original or Proposed Contract Begin Date:	12/01/19	*Current or Proposed End Date:	11/30/24
Current Request Amendment Number: *(if applicable)*		N/A	
Proposed Amendment Effective Date: *(if applicable)*		N/A	
*Department Submitting:		Department of Health	
*Division:		Laboratory Services	
*Date Submitted:		09/04/19	
*Submitted Within Sixty (60) days:		yes	
If not, explain:			
*Contract Vendor Name:		Eastern Business Forms	
*Current or Proposed Maximum Liability:		$300,000.00	
*Estimated Total Spend for Commodities:		$300,000.00	

*Current or Proposed Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY:20	FY:21	FY:22	FY:23	FY24	FY25
$35,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$25,000.00

*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:	100%	Federal:	
Interdepartmental:		*Other*:	
If "*other*" please define:			
If "*interdepartmental*" please define:			

Dates of All Previous Amendments or Revisions: (*if applicable*)	Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)

Method of Original Award: (*if applicable*)	N/A
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	$180,000.00 for the first 3 years, $300,000.00 for the total five years. Cost was determined by previous usage and vendor quotation.
*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.	It is vital the forms be printed on the 903 paper which is designed for the collection of the dried blood spots from a small stick to the infant's heel. This is the only vendor who can provide the 903 paper and meets laboratory protocol.

Invitation to Bid (ITB)
For 34301 Newborn Screening Forms
Event # XXXXX

1. Section 1 -- Background Information

1.1. To establish a multi-year contract for Newborn Screening Collection Kits. These kits are on 903 paper and designed for the collection of blood from an infant's heel stick which is applied to the filter paper as part of the submission to the State Lab for testing. This kit also captures demographic information on the infant.

1.2. **Accommodation for People with Disabilities**. Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.

1.3. **Responses Due**. The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

2. Section 2 -- Award Criteria

2.1. **Single Award -- Lowest Cost**. A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.

3. Section 3 -- Standard Terms of the Solicitation

3.1. **Respondent Registration**. Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST

3.2. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.

3.3. **Quality of Workmanship and Materials**. Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.

3.4. **Performance**. The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.

3.5. **Clarifications**. The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.

3.6. **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 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.

3.7. **Response Cancellation and Rejection**. The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except

pursuant to target pricing or best and final offer negotiations as specified in this ITB.

3.8. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Tara Roark
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102
615-532-1837
Tara.Roark@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102
615-741-1035
Helen.Crowley@tn.gov

3.9. **Responses Submitted by Mail**. If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response 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 response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

3.10. **Models Included in Response**. All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.

3.11. **Respondent Certification**. By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.

3.12. **Exceptions or New Terms or Conditions**. Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.

3.13. **Conflict of Interest**. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:

a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.14. **Specifications Govern**. Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.

3.15. **Firm Offer**. The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.

3.16. **F.O.B. Destination**. Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.

3.17. **Tax Exemption**. The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful

respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.

3.18. **Prompt Pay Discount**. Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.

3.19. **Fixed Discount or Surcharge**. The percent discount or surcharge per line item must be fixed for the contract's term.

3.20. **On-site Inspection**. All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.

3.21. **Samples - Required**. Respondents are required to submit samples of the products listed below for evaluation and testing:

Reference Line(s):

Samples provided shall be identical to the products identified in the response. Respondents must provide the samples, at no cost to the State, to the Central Procurement Office by the Response Deadline. The Central Procurement Office will not accept any samples unless all transportation charges have been prepaid. Samples must be clearly labeled as follows:

State of Tennessee Department of General Services, Central Procurement Office
312 Rosa L Parks Avenue,
William R. Snodgrass Tennessee Tower, 3rd Floor
Nashville, TN 37243-1102
Attn: Tara Roark
Name of Respondent:
Address:
ITB Number:
Item Number(s):

Response Deadline:

If requested samples are not provided or are improperly labeled, the State may consider the response non-responsive. A respondent may submit a written request at the time the samples are submitted for the State to return the samples at the end of testing. As long as the samples are not destroyed in the evaluation and testing processes, then the State may return the samples at the respondent's expense. If the State does not receive a written request to return the samples, then the State will utilize or dispose of the samples at its discretion. The State may retain samples from the successful respondent for the contract's term. The State assumes no liability for samples.

3.22. **Used Equipment**. When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings

have been removed, obliterated, or changed in any way.

3.23. **Tennessee Contractor License**. Respondents shall be properly licensed as of the date it files a response to this ITB and shall provide evidence of compliance with all applicable provisions of the Contractors Licensing Act of 1994, Tenn. Code Ann. § 62-6-101, *et seq.* in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119, when applicable, shall be rejected.

3.24. **Purchase of Materials for Highways or Roadways**. Respondents must comply with Tenn. Code Ann. § 54-5-135 when purchasing materials used for highway or road construction, resurfacing, or maintenance.

3.25. **Energy Star Products**. Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.

3.26. **Safety of Chemical Products**. All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.

3.27. **Professional Licensure**. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

3.28. **Department of Revenue Registration**. Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: https://tntap.tn.gov/eservices/_/#1

3.29. **Prohibition of Illegal Immigrants**. Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.

3.30. **Inspection of Procurement File**. All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated

award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.

3.31. **Protest by Respondent**. Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent 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: https://www.tn.gov/generalservices/procurement.html. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

Efforts to Achieve Diversity Business 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, service-disabled veteran-owned, disabled-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)
"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)
"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.

"Disabled Business Enterprise (DSBE)
"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:
https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html

Instructions
As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. 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:
https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215
directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION 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? ___ Yes ___ No If yes, which designation does the Respondent qualify? ___MBE ___WBE ___DSBE___SDVBE __SBE Certifying Agency:		

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

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	**% of Contract**	**Estimated Amount**	**MBE/ WBE/ SDVBE/ SBE / DSBE 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 monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:
https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810
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 Signatory _____

4. SCOPE:

4.1. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

4.2. Warranty Clauses:

4.2.1. **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 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. 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.

4.3. **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.

5. TERM OF CONTRACT:

5.1. **Term of Contract**.

5.1.1. This Contract shall be effective on December 01, 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. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

5.1.2. **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, 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.

5.1.3. **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.

6. PAYMENT TERMS AND CONDITIONS:

6.1. **Maximum Liability**. In no event shall the maximum liability of the State under this Contract exceed Three Hundred Thousand Dollars ($300,000.00) ("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.

6.2. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source 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 prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

6.4. **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 this Contract. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.

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. Purchase order number (assigned by the State);
5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. 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 this Contract and in accordance with payment terms and conditions set forth in this Contract;
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 a line item for 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.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

6.5. **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.

6.6. **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 this Contract, to not constitute proper compensation for goods delivered or services provided.

6.7. **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.

6.8. **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.

7. **MANDATORY TERMS AND CONDITIONS:**

7.1. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.

7.2. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.

7.3. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.

7.4. **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.

7.5. **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. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

Contractor
Contractor's Contact Name & Title
Address
Email Address
Telephone Number

State of Tennessee:

Karen Olive
Department of Health
710 James Robertson Parkway, Andrew Johnson Tower, 5th Floor
Nashville TN 37243
615-253-5686
Karen.Olive@tn.gov

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

7.6. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.

7.7. **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.

7.8. **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.

7.9. **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.

7.10. **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.

7.11. **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.

7.12. **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.

7.13. **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: https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html, 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.

7.14. **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.

7.15. **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.

7.16. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.

7.17. **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.

7.18. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, 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.

7.19. **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.

7.20. **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. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation 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.

7.21. **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 and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State 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. 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.

7.22. **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' fees, court costs, expert witness fees, and other litigation expenses 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.

7.23. **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.

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.

7.24. **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.

7.25. **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.

7.26. **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.

7.27. **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 for the affected obligations 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.

7.28. **State and Federal Compliance.** The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.

7.29. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. 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 -- 408.

7.30. **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.

7.31. **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.

7.32. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

7.33. **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);

c) any clarifications of or addenda to the Contractor's response seeking this Contract;

d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;

e) any technical specifications provided to respondents during the procurement process to award this Contract; and,

f) the Contractor's response seeking this Contract.

7.34. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, 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.

7.35. Insurance Requirements:

7.35.1. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. 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.

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.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

7.35.2. **Workers' Compensation and Employer Liability Insurance.**

a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or

c) 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.

d) 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:

    1. The Contractor employees fewer than five (5) employees;

    2. The Contractor is a sole proprietor;

    3. The Contractor is in the construction business or trades with no employees;

    4. The Contractor is in the coal mining industry with no employees;

    5. The Contractor is a state or local government; or

    6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

7.35.3. **Commercial General Liability Insurance.**

a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising

injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

7.36. **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.

7.37. **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.

8. SPECIAL TERMS AND CONDITIONS:

8.1. **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.

8.2. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

8.3. **State Ownership of Goods.** The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

8.4. **Liens, Encumbrances and Title.** The Contractor owns and has good and marketable title to, and legal ownership of the goods, free and clear of any and all liens, security interests, pledges, mortgages, charges, limitations, claims, restrictions, rights of first refusal, rights of first offer, rights of first negotiation or other encumbrances of any kind

or nature (collectively, "Encumbrances"). Upon delivery, without exception, the State will acquire from the Contractor legal and beneficial ownership of, good and marketable title to, and all rights to the goods to be sold to the State by the Contractor, free and clear of all Encumbrances. The Contractor shall, within ten (10) days after delivery deliver to the State if required by applicable law to establish or show evidence of ownership, any and all documents or certificates required to establish or show evidence of the State's ownership in the goods.

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 #	**HL00000288**
1. Contracting Agency	**Health**
2. Type of Contract or Procurement Method	☐ No Cost ☐ Revenue ☒ Sole Source ☐ Proprietary ☐ Competitive Negotiation ☐ Other _____
3. Requestor Contact Information	Christine Dorley Tennessee DOH/Lab Services 630 Hart Lane, 5th floor, NBS Nashville, TN 37216 m.christine.dorley@tn.gov 615-262-6352
4. Brief Goods or Services Caption	**Newborn Screening Collection Kits**
5. Description of the Goods or Services to be Acquired	Newborn Screening Collection kits on 903 paper are designed for the collection of blood from infant heel stick which is applied to filter paper as part of the submission to the State lab for testing. Kit also captures demographic information on the infant. Testing is mandated by rules and regulations of the DOH under Chapter 1200-15-1.
6. Proposed Contractor	**Eastern Business Forms**

Request Tracking #	**HL00000288**
7. Name & Address of the Contractor's principal owner(s) *– NOT required for a TN state education institution*	Will Adams Eastern Business Forms PO Box 10 Mauldin, SC 29662 800-387-2648
8. Proposed Contract Period – *with ALL options to extend exercised* ***The proposed contract start date shall follow the approval date of this request.***	36 **months + 2 options to renew**
9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request *– information technology (N/A to THDA)*	☒ **Not Applicable** ☐ **Attached**
10. eHealth Pre-Approval Endorsement Request *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ **Not Applicable** ☐ **Attached**
11. Human Resources Pre-Approval Endorsement Request *– contracts with an individual, state employee training, or services related to the employment of current or prospective state employees*	☒ **Not Applicable** ☐ **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.	☒ **NO** ☐ **YES,**
13. Maximum Contract Cost – *with ALL options to extend exercised*	**$ 300,000.00**
14. Was there an initial government estimate? If so, what amount?	☒ **NO** ☐ **YES, $**
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	**Vendor quotation**
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	**Price was compared to previous Newborn screening form contract (46423) that expires 12/14/19. The quotation offered by Eastern Business Forms includes the same pricing offered in 2015.**
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	**Primarily via phone**
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	**These kits capture demographic information and use 1/8" dried blood spot specimens from infants to be sent to the lab for testing. Testing cannot be performed without the blood specimen. If testing is not performed it is a violation of State rules and regulations regarding testing of all newborns for inborn errors of metabolism and other genetic disorders. Tests are mandated by rules and regulations of the DOH under Chapter 1200-15-1.**

Request Tracking #	**HL00000288**
19. Proposed contract impact on current State operations	**The ability to comply with State rules and regulations DOH Chapter 1200-15-1 to test all newborns.**
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	**The State of Tennessee, Division of Laboratory Services uses 903 paper for collection of 1/8" dried blood spot specimens and demographic information on newborns and has validated testing using this paper. To remain compliant with the State of Tennessee and DOH rules and regulations, testing for inborn errors of metabolism and other genetic disorders must occur. These forms are compatible with our current testing protocols and do not require any further validation. Changing to a another brand of forms will require extensive testing and manpower in addition to outside help from county health departments for blood collection as a validation study to prove that any new forms would be compatible with our current testing protocols. Eastern Business Forms is the only supplier of 903 paper, which the State has previously validated for all test collections and laboratory assays. Please see attached for explanation of validation process with Clinical & Laboratory Standards Institute (CLSI) guidelines NBS01-A6 sections 6 and 7.**
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?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	☐ **NO** ☐ **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.	**Contractor has been providing collection kits to the State of Tennessee for more than 10 years, Contractor has been in business for over 51 years providing newborn screening kits.**

Request Tracking #	HL00000288
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.	☐ NO ☒ YES, **Method: Sole Source** **Name/Address:** Eastern Business Forms PO Box 10 Mauldin, SC 29662 800-387-2648
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	**Eastern Business Forms is the only vendor that can provide the 903 forms used for collecting newborn screening blood spots and demographic information.**

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:

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Subject 34301 Newborn Screening Forms

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Approved	Approved	Approved	Approved	Approved
Lindsay Oliveras Agency Forms Approver 07/26/19 - 7:37 AM	Tara Roark CPO Sourcing Forms Approver 07/26/19 - 2:36 PM	Kevin C Bartels CPO Standard Forms Approver 07/29/19 - 2:51 PM	Christopher Salita CPO Director Forms Approver 08/12/19 - 10:33 AM	Bryan S Chriske COT Treasury Forms Approver 08/13/19 - 12:59 PM

Comments

OK

EBF

April 26, 2019

To Whom it May Concern,

Eastern Business Forms (EBF) purchased the 903 trademark from GE Healthcare in 2014 to supply all 903 products for any diagnostic application. 903 Filter paper should therefore be purchased through EBF for this purpose, including any Neonatal application.

Regards,

Will Adams
EBF Inc.

EASTERN BUSINESS FORMS, INC. *Since 1964* PO Box 10, Mauldin, SC 29662
Phone: 800.387.2648 Fax: 864.297.6492

MINIMUM SPECIFICATIONS FOR NEWBORN SCREENING FORMS PH1582

A. Completed form must meet the following dimensions:
   1. Part 1: Overall size shall be 5-1/2" x 8-1/8" with a 9/16" stub. 1-1/4" of this stub to include a double bar code (Code 3 of 9 Mod check digit). ¼" barcode to stay with top copy and ½" to stay with specimen card. Barcode contains the Specimen Control Number. Ink prints face in black and PMS color of choice.
   2. Part 2: Overall size shall be 5-1/2" x 8-1/8" (+/- 1/16") with a 9/16" stub. Paper #14 Blue CFB, Black images.
   3. Part 3: Overall size shall be 5-1/2" x 8-7/16" (+/- 1/16") with a 9/16" stub. Paper #14 Pink CFB, Black image plus PMS color of choice. Backer prints black ink. No ink screening to be added to this part. Hearing Screening part with image of ear on form. Backer – hearing instructions printed in black ink
   4. Part 4: Overall size shall be 5-1/2" x 8-3/8" (+/- 1/16") with a 9/16" stub. Food and Drug Administration (FDA) approved filter paper for blood collection attached to the backside with autoclavable glue with ½" tipped on area. Paper: White #105 CF ink, black ink and PMS color of choice. Ink prints black biologically inactive ink only on filter paper face and backer.
   5. Part 5: Overall size shall be 5-1/2" x 2-3/16" (+/- 1/16"), prints bio Black 586 ink. Lot number of paper and expiration date must be added to this part.
   6. Part 6: Overall size 5-1/2" x 11-1/8" (+/- 1/16"). Paper is Buff Ledger. Specimen collection information printed on back only in black ink. Biohazard symbol printed on Buff overlay flap in red and black ink.

B. Forms must be packaged so that Part 6 is folded over Part 5 for protection.

C. All parts are to be printed with the same number. Numbers are to run consecutively. Beginning number will be provided to the winning vendor.

D. Results area of form shall be white on Part 1

E. Expiration date shall be at least three (3) years after printing of forms and must be printed on Part 1 of form and the filter card.

F. Forms shall be typeset

G. Forms shall be printed in FDA approved clean room conditions

H. For Quality Assurance, bidder shall supply along with bid one sample of a successfully completed screening collection form

I. Prior to printing each batch of form, the State of Tennessee has the option of revising forms. Vendor shall submit a proof of requested changes before printing.

J. Agency shall provide purchase orders with a minimum order quantity of 100,000 or greater per order.

EBF

Quotation

Form Name: Tennessee NBS Card - 10534416
Date: May 8, 2019
Quote Number: EBF-050819

Quantities Quoted:		**Price Per Card:**
150,000		$.39/card

*Quoted as Exact Quantity, with a Missing Numbers List
*Delivery – 7 weeks from PO receipt & Card signoff
*Quoted price includes freight