



Department of Economic and Community Development

Randy Boyd,
Commissioner

Bill Haslam
Governor

To: Fiscal Review Committee
From: Department of Economic and Community Development
Date: June 25, 2019
Re: Contract 49228, Steffen Bayer: Amendment 1

The Department of Economic and Community Development requests the review of Contract 49228 – Amendment 1.

Contract 49228 provides for Foreign Direct Representative services in Germany, and as a result of this amendment, Benelux, Austria, Switzerland, Poland, and Czech Republic.

TNECD employs full-time consultants to represent the State of Tennessee for economic development purposes throughout the world. TNECD has contracted with Steffen Bayer (the “Contractor”) to represent the State of Tennessee in Germany. The Contractor’s primary responsibility is to increase the number of jobs created in Tennessee by foreign direct investment. To achieve this goal, the Contractor actively seeks out companies who are interested in locating operations in the United States and connects the companies with TNECD’s business development team.

Recently, TNECD canceled its contract for foreign direct representative services in the UK and Benelux due to the Contractor’s poor performance. TNECD has determined that the Benelux market is not large enough to have a dedicated foreign direct representative. Therefore, TNECD is amending Contract 49228 to expand the Contractor’s territory to include the Benelux region as well as Austria, Switzerland, Poland, and Czech Republic. This amendment increases the Contractor’s annual job creation commitment from 400 job commitments to 450 job commitments, expands the Contractor’s territory to include Benelux, Austria, Switzerland, Poland, and Czech Republic, and increases the Contractor’s monthly compensation from \$12,855.00 to \$16,666. The contract TNECD cancelled provided an annual compensation of up to \$162,500; whereas amending Contract 49228 to include the additional regions will only cost the State an additional \$71,453 per year, resulting in significant cost savings. TNECD therefore believes the increase in in Contract 49228’s maximum liability is reasonable due to the fact that the Contractor has performed well as TNECD’s foreign direct representative in Germany and will provide significant cost savings.

Finally, this amendment will extend the contract for a final year through March 16, 2021.

If you have any further questions, please contact Garrett E. Guillory at 615.532.6346 or Garrett.E.Guillory@tn.gov.

Attachments:

- Supplemental Documentation Required for Fiscal Review Committee
- Summary Sheet for Original Contract
- Copy of Original Contract
- Approved Extension Request
- Proposed Summary Sheet and Copy of Amendment 1
- Approved Amendment Request

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Garrett Guillory	*Contact Phone:	615-532-6346		
*Presenter's name(s):					
Edison Contract Number: <i>(if applicable)</i>	49228	RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	March 17, 2016	*Current or Proposed End Date:	March 16, 2021		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Economic and Community Development				
*Division:	Business Development				
*Date Submitted:	October 17, 2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Steffen Bayer				
*Current or Proposed Maximum Liability:	\$892,753 (proposed); \$821,300.00 (current)				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:16	FY:17	FY:18	FY:19	FY:20	FY:21
\$51,420.00	\$154,260.00	\$164,260.00	\$164,260.00	\$198,559.00	\$159,994.00
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:16	FY:17	FY:18	FY:19		
\$38,565	\$154,260.00	\$164,260.00	\$164,260.00		
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Contract allocation allows for up to and \$10,000 for the creation of for job creation commitments above the Contract's required job creation commitments, in 50 job commitment increments. The Contractor did not receive the additional \$10,000 in FY17.		
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			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	\$892,753	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Revision 1		Extended the Contract term by one year, to end on March 15, 2019.	
Method of Original Award: <i>(if applicable)</i>		RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		N/A	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		N/A	

Total Payments to a Vendor 41

Unit	Voucher	Invoice	Remit Supp	Name	Gross Amt	Reference	Pymnt Date	Recon Status	Reconciled Date	Warrant Amount	Method	Message
33001	00016117	TN2016-03	0000195234	Steffen Bayer	12,855.00	0000002586	5/12/2016	REC	5/13/2016	12,855.00	WIR	
33001	00016325	2	0000195234	Steffen Bayer	12,855.00	0000002616	6/15/2016	REC	6/22/2016	12,855.00	WIR	
33001	00016416	3	0000195234	Steffen Bayer	12,855.00	0000002632	6/28/2016	REC	6/30/2016	12,855.00	WIR	
				FY 16 Total	38,565.00							
33001	00016589	4	0000195234	Steffen Bayer	12,855.00	0000002660	7/27/2016	REC	7/28/2016	12,855.00	WIR	
33001	00016850	1	0000195234	Steffen Bayer	12,855.00	0000002686	8/25/2016	REC	8/26/2016	12,855.00	WIR	
33001	00017039	2-49228	0000195234	Steffen Bayer	12,855.00	0000002709	9/22/2016	REC	9/23/2016	12,855.00	WIR	
33001	00017231	3-49228	0000195234	Steffen Bayer	12,855.00	0000002736	10/26/2016	REC	10/27/2016	12,855.00	WIR	
33001	00017442	4-49228	0000195234	Steffen Bayer	12,855.00	0000002767	11/30/2016	REC	12/1/2016	12,855.00	WIR	
33001	00017604	5-49228	0000195234	Steffen Bayer	12,855.00	0000002790	12/23/2016	REC	12/28/2016	12,855.00	WIR	
33001	00017730	6-49228	0000195234	Steffen Bayer	12,855.00	0000002829	1/25/2017	REC	1/27/2017	12,855.00	WIR	
33001	00017931	7-49228	0000195234	Steffen Bayer	12,855.00	0000002858	2/24/2017	REC	2/27/2017	12,855.00	WIR	
33001	00018116	8-49228	0000195234	Steffen Bayer	12,855.00	0000002886	3/27/2017	REC	3/29/2017	12,855.00	WIR	
33001	00018360	9-49228	0000195234	Steffen Bayer	12,855.00	0000002930	5/4/2017	REC	5/8/2017	12,855.00	WIR	
33001	00018464	10-49228	0000195234	Steffen Bayer	12,855.00	0000002950	5/22/2017	REC	5/24/2017	12,855.00	WIR	
33001	00018682	11-49228	0000195234	Steffen Bayer	12,855.00	0000002978	6/23/2017	REC	6/27/2017	12,855.00	WIR	
				FY 17 Total	154,260.00							
33001	00018838	12-49228	0000195234	Steffen Bayer	12,855.00	0000003006	7/21/2017	REC	7/24/2017	12,855.00	WIR	.
33001	00019129	1-49228	0000195234	Steffen Bayer	12,855.00	0000003042	8/29/2017	REC	8/30/2017	12,855.00	WIR	.
33001	00019320	02-49228	0000195234	Steffen Bayer	12,855.00	0000003086	10/10/2017	REC	10/12/2017	12,855.00	WIR	.
33001	00019409	03-49228	0000195234	Steffen Bayer	12,855.00	0000003104	10/20/2017	REC	10/25/2017	12,855.00	WIR	.
33001	00019652	04-49228	0000195234	Steffen Bayer	12,855.00	0000003130	11/22/2017	REC	11/27/2017	12,855.00	WIR	.
33001	00019812	05-49228	0000195234	Steffen Bayer	12,855.00	0000003168	12/21/2017	REC	12/22/2017	12,855.00	WIR	.
33001	00019940	06-49228	0000195234	Steffen Bayer	12,855.00	0000003193	1/22/2018	REC	1/24/2018	12,855.00	WIR	.
33001	00020186	07-49228	0000195234	Steffen Bayer	12,855.00	0000003225	2/26/2018	REC	2/27/2018	12,855.00	WIR	.
33001	00020370	08-49228	0000195234	Steffen Bayer	12,855.00	0000003254	3/26/2018	REC	3/28/2018	12,855.00	WIR	.
33001	00020514	09-49228	0000195234	Steffen Bayer	22,855.00	0000003285	4/26/2018	REC	4/27/2018	22,855.00	WIR	.
33001	00020677	010-49228	0000195234	Steffen Bayer	12,855.00	0000003323	5/21/2018	REC	5/22/2018	12,855.00	WIR	.
33001	00020868	011-49228	0000195234	Steffen Bayer	12,855.00	0000003352	6/22/2018	REC	6/25/2018	12,855.00	WIR	.
				FY 18 Total	164,260.00							
33001	00021029	012-49228	0000195234	Steffen Bayer	12,855.00	0000003389	7/20/2018	REC	7/23/2018	12,855.00	WIR	.
33001	00021318	49228-1	0000195234	Steffen Bayer	12,855.00	0000003428	8/23/2018	REC	8/24/2018	12,855.00	WIR	.
33001	00021508	49228-2	0000195234	Steffen Bayer	12,855.00	0000003457	9/24/2018	REC	9/25/2018	12,855.00	WIR	Foreign Direct Inv Svcs contract 49228, payment 2 dated 09/17/18
33001	00021721	49228-3	0000195234	Steffen Bayer	12,855.00	0000003506	10/31/2018	REC	11/1/2018	12,855.00	WIR	.
33001	00021824	49228-4	0000195234	Steffen Bayer	12,855.00	0000003533	11/26/2018	REC	11/27/2018	12,855.00	WIR	.
33001	00022008	49228-5	0000195234	Steffen Bayer	12,855.00	0000003572	12/26/2018	REC	12/27/2018	12,855.00	WIR	.
33001	00022181	49228-6	0000195234	Steffen Bayer	12,855.00	0000003607	1/28/2019	REC	1/29/2019	12,855.00	WIR	.
33001	00022340	49228-7	0000195234	Steffen Bayer	12,855.00	0000003641	2/22/2019	REC	2/25/2019	12,855.00	WIR	.
33001	00022543	49228-8	0000195234	Steffen Bayer	12,855.00	0000003674	3/25/2019	REC	3/26/2019	12,855.00	WIR	.
33001	00022743	49228-9	0000195234	Steffen Bayer	22,855.00	0000003710	4/26/2019	REC	4/29/2019	22,855.00	WIR	.
33001	00022909	49228-10	0000195234	Steffen Bayer	12,855.00	0000003748	6/3/2019	REC	6/4/2019	12,855.00	WIR	.
33001	00023111	49228-11	0000195234	Steffen Bayer	12,855.00	0000003767	6/24/2019	UNR		12,855.00	WIR	.
				FY 19 Total	164,260.00							

Renewal or Extension Request

Route a completed request, as one file in PDF format, via e-mail attachment to: Agsprs.Agsprs@tn.gov. This request should ONLY be used for renewals or extensions of contracts. ANY other change to a contract requires an Amendment Request.

APPROVED	
CHIEF PROCUREMENT OFFICER	DATE

Edison Contract Number #	49228
1. Procuring State Agency Name and five-digit Business Unit #	Department of Economic and Community Development # 33001
2. Contractor Legal Name	Steffen Bayer
3. Edison Vendor ID Number #	195234
4. Contract Begin Date	March 16, 2016
5. Current Contract End Date	March 15, 2018
6. Proposed Contract End Date – Provide the new contract end date if this Renewal or Extension Request is granted	March 15, 2019
7. Proposed Term of Contract Including all extensions and renewals	60 months
8. Confirm that there is a valid renewal or extension option remaining in the contract and confirm that there has been no other change to the contract’s term and conditions – If there is not a valid renewal or extension option remaining in the contract, submit an Amendment Request instead. (Note: a contract cannot exceed sixty (60) months without an approved Rule Exception Request and Contract Amendment.)	YES <input checked="" type="checkbox"/>
9. Confirm this renewal or extension does not require an increase to the Contract’s Maximum Liability or Estimated Liability. – If additional funds are required, submit an Amendment Request instead.	YES <input checked="" type="checkbox"/>
10. Confirm that all necessary due diligence has been performed and it is in the State’s best interest to renew or extend the contract. – Considering such items as contractor performance, pricing, etc.	YES <input checked="" type="checkbox"/>

Edison Contract Number #**49228****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)

Robert D. Rolfe/SK 2/12/18

cy19-13633

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	33002-14818	
1. Procuring Agency	Department of Economic and Community Development	
2. Contractor	Steffen Bayer	
3. Edison contract ID #	49228	
4. Proposed amendment #	1	
5. Contract's Original Effective Date	March 17, 2016	
6. Current end date	March 16, 2019	
7. Proposed end date	March 16, 2021	
8. Current Maximum Liability or Estimated Liability	\$ 821,300.00	
9. Proposed Maximum Liability or Estimated Liability	\$ 892,753.00	
10. Strategic Technology Solutions Pre-Approval Endorsement Request – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
11. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. Human Resources Pre-Approval Endorsement Request – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Explain why the proposed amendment is needed	<p>This amendment increases the Contractor's annual job creation commitment from 400 to 450.</p> <p>This amendment expands the Contractor's territory to include the Benelux, Austria, Switzerland, Poland, and Czech Republic.</p> <p>This amendment increases the Maximum Liability by \$71,453.00 This amendment extends the contract to March 16, 2021.</p>	

Agency request tracking #	33002-14818
<p>14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.</p> <p>TNECD canceled Contract 52674 for foreign direct investment services in the UK and Benelux due to the Contractor's poor performance. TNECD has determined that the Benelux market is not large enough to have a dedicated foreign direct representative. Therefore, TNECD is amending this Contract to expand the Contractor's territory to include the Benelux region as well as Austria, Switzerland, Poland, and Czech Republic. Contract 52674, which was cancelled, paid the contractor up to \$162,500; whereas expanding this Contract to include Benelux will only cost the State \$45,740 per year, resulting in significant cost savings.</p>	
<p>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)</p> <p><i>Robert O. Ruffe/jm</i> 6/5/19</p>	



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 33002-57016	Edison ID 49228	Contract # 49228	Amendment # 1		
Contractor Legal Entity Name Steffen Bayer			Edison Vendor ID 195234		
Amendment Purpose & Effect(s) Maximum Liability increase. Scope change adding additional territory and increasing annual job creation commitment.					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: March 16, 2021			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 71,453.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$51,420.00				\$51,420.00
2017	\$154,260.00				\$154,260.00
2018	\$164,260.00				\$164,260.00
2019	\$164,260.00				\$164,260.00
2020	\$198,559.00				\$198,559.00
2021	\$159,994.00				\$159,994.00
TOTAL:	\$892,753.00				\$892,753.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>CPO USE</i>		
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT 1
OF CONTRACT 49228**

This Amendment is made and entered by and between the State of Tennessee, Department of Economic and Community Development, hereinafter referred to as the "State" and Steffen Bayer, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section A.2. is deleted in its entirety and replaced with the following:

A.2. Deliverables:

1. **Job Creation** - The Representative's primary measure of success will be their contribution to meeting TNECD's annual job creation goal by recruiting companies to set up operations in Tennessee. At the end of the initial contract period of two years, renewal of the contract will be based on whether Representatives' activities have led to:
 - a. **A minimum of 400 job commitments** resulting from recruiting new companies to Tennessee. Job commitments will be determined based on either 1) a public announcement or press release from TNECD on behalf of the company or 2) the date that a company signs an incentive from TNECD, whichever occurs sooner; and
 - b. If the contract is renewed for years 3 – 5, **a minimum of 450 job commitments** per year of the contract resulting from new companies to Tennessee. Job commitments will be determined based on either 1) a public announcement or press release from TNECD on behalf of the company or 2) the date that a company signs an incentive contract with TNECD, whichever occurs sooner.

The following sections outline the monthly, quarterly, and annual deliverables that will be required of the Representative as a means of supporting the TNECD's overall goal of job creation as described in Section A.2.1. above. The Representative will work closely on these deliverables with the Director of Foreign Direct Investment to develop a strategy and plan of action that will allow the Representative to meet the minimum requirements listed in Sections A.2.1. through A.2.5.

2. **Verified Project Pipeline** - The Representative will be responsible for generating and maintaining a verified pipeline of projects and potential targets. The Representative will work with the Director of Foreign Direct investment to complete the following deliverables which support the overall goal of job creation:
 - a. On a monthly basis, the Representative will work with the TNECD's Director of Foreign Direct Investment to agree on specific target companies and industries for the Representative to contact over the following month.
 - b. On a monthly basis, the Representative will meet with **a minimum of ten (10) prospective companies**. Details of these meetings and other meetings and events will be input into TNECD's CRM system on a weekly basis by the Representative.
 - c. On a quarterly basis, the Representative will work with the Director of Foreign Direct Investment to submit to TNECD's senior staff a review of the Representative's activities and an action plan for the following quarter.
 - d. On a semi-annual basis, the Representative will work with the Director of Foreign Direct Investment to submit an action plan for reaching out to a list of

candidate companies for specific TNECD projects including, but not limited to, the Memphis Regional Megasite and other projects.

- e. The Representative will conduct a monthly review and planning call with the Director of Foreign Direct Investment.
3. **Stakeholder/Multiplier Meetings** – On a monthly basis, the Representative will hold a minimum of four (4) stakeholder and multiplier meetings.
 - a. On a monthly basis, the Representative will work with the Director of Foreign Direct Investment to agree upon **a minimum of four (4) specific stakeholder and multiplier meetings** or events to attend during the month. Stakeholders and multipliers indicate people or organizations that facilitate networking with potential target companies and can help strengthen Tennessee’s reputation in the business community.
 - b. On a quarterly basis, the Representative will submit a brief written memo to the Director of Foreign Direct Investment that 1) outlines major stakeholder and multiplier activities of the past quarter, 2) provides a brief outlook of the major upcoming stakeholder and multiplier meetings and events, and 3) makes recommendations for TNECD team participation in future meetings and events (for example, recommending that a team of project managers attend a particular trade show or supplier conference).
 - c. The representative will collaborate with the Director of Foreign Investment and TNECD project managers to develop an annual strategy and itinerary for participating in meetings and events with target stakeholders and multipliers.
 4. **Visits to Tennessee and TNECD Visits to Germany, Benelux, Austria, Switzerland, Poland, and Czech Republic** – The Representative will visit Tennessee at least twice per year. The Representative will also be prepared to support visits by TNECD and State of Tennessee officials to Germany, Benelux, Austria, Switzerland, Poland, and Czech Republic at least twice per year.
 - a. **Visits to Tennessee** – The Representative will use this time to learn about TNECD and Tennessee and to work with the TNECD team to develop a strategic plan for the year. The Representative will work with the Director of Foreign Direct Investment to schedule these visits.
 - b. **TNECD Visits** – The Representative will be expected to support two visits to Germany, Benelux, Austria, Switzerland, Poland, and Czech Republic per year by TNECD staff, potentially including the Commissioner and Governor. For these visits, the Representative will assist by coordinating travel, logistics, and accommodations as well as arranging meetings with prospects, existing companies, and stakeholders. The Representative may also be asked to assist with special events such as receptions or dinners with multiple invitees. These visits may require travel by the Representative within Germany, Benelux, Austria, Switzerland, Poland, and Czech Republic.
 5. **Other Duties**
 - a. **Engage Existing Companies** - At the direction of the Director of Foreign Direct Investment, the Representative will be prepared to engage with companies in Germany, Benelux, Austria, Switzerland, Poland, and Czech Republic that have existing operations in Tennessee.
 - b. **Market Intelligence** - On a continuing basis, the Representative will follow a wide variety of media outlets in Germany, Benelux, Austria, Switzerland,

Poland, and Czech Republic and be prepared to offer TNECD insights and to make recommendations about market strategy and potential targets.

- c. **Marketing Strategy** - At the direction of the Director of Foreign Direct Investment, the Representative will collaborate with TNECD's Marketing team to determine a marketing strategy tailored to the Representative's specific market and target companies.
- d. **Performing FDI Services for Other Parties** – The Representative will not perform foreign direct investment recruiting activities for any other party without prior written consent from TNECD.

2. Contract Section B.1. is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period beginning on March 17, 2016 ("Effective Date") and ending on March 16, 2021, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

3. Contract section C.1. is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Eight Hundred Ninety-Two Thousand Seven Hundred Fifty-Three Dollars and No/100 Dollars and No/100 (\$892,753.00). 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 in this Contract.

4. Contract section C.3. is deleted in its entirety and replaced with the following:

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Service Description	Amount (per compensable increment)
Foreign Direct Investment Representative Services (paid in twelve (12) equal installments on a monthly basis)	\$200,000 per Year (\$16,666 per Month)
Additional Incremental Job Commitment Incentive: If Contractor exceeds minimum job commitments per year (as defined in Section A.2.1. above), Contractor will receive additional incremental job commitment incentives.*	\$2,500 each additional 50 job commitments, up to a maximum of \$10,000 per year of the contract.
*Contractor will not receive additional incremental job commitment incentives for fewer than 50 additional jobs (or next increment of 50 jobs) created.	

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective October 17, 2019. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

STEFFEN BAYER:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

ROBERT O. ROLFE, COMMISSIONER

DATE

**CONTRACT**

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 03/16/16	End Date 03/15/18	Agency Tracking # 33002-57016	Edison Record ID 49228		
Contractor Legal Entity Name Steffen Bayer			Edison Vendor ID 195234		
Goods or Services Caption (one line only) The Contractor will provide Foreign Direct Investment Services in Germany. – Bus Dev					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016	\$51,420.00				\$51,420.00
2017	\$164,260.00				\$164,260.00
2018	\$164,260.00				\$164,260.00
2019	\$164,260.00				\$164,260.00
2020	\$164,260.00				\$164,260.00
2021	\$112,840.00				\$112,840.00
TOTAL:	\$821,300.00				\$821,300.00
Contractor Ownership Characteristics:					
<input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> Competitive Selection			RFP		
<input type="checkbox"/> Other					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
 3/24/16					
Speed Chart (optional)			Account Code (optional)		



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
AND
STEFEN BAYER**

This Contract, by and between the State of Tennessee, Department of Economic and Community Development ("State" or "ECD") and Steffen Bayer ("Contractor" or "Representative"), is for the provision of Foreign Direct Investment Representative services in Germany as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a/an Individual
Contractor Place of Incorporation or Organization: Guerickestrasse 37, 80805 Muenchen (Munich)
Contractor Edison Registration ID # 195234

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract

A.2. Deliverables:

1. **Job Creation** - The Foreign Direct Investment Representative's primary measure of success will be their contribution to meeting ECD's annual job creation goal by recruiting companies to set up operations in Tennessee. At the end of the initial contract period of two years, renewal of the contract will be based on whether Representatives' activities have led to:
 - a. **A minimum of 400 job commitments** resulting from recruiting new companies to Tennessee. Job commitments will be determined based on either 1) a public announcement or press release from ECD on behalf of the company or 2) the date that a company signs an incentive contract with ECD, whichever occurs sooner; and
 - b. If the contract is renewed for years 3-5, **a minimum of 400 job commitments** per year of the contract resulting from recruiting new companies to Tennessee. Job commitments will be determined based on either 1) a public announcement or press release from ECD on behalf of the company or 2) the date that a company signs an incentive contract with ECD, whichever occurs sooner.

The following sections outline the monthly, quarterly, and annual deliverables that will be required of the Representative as a means of supporting the department's overarching goals of job creation as described in Section A.2.1. above. The Representative will work closely on these deliverables with the Director of Foreign Direct Investment to develop a strategy and plan of action that will allow the Representative to meet the minimum requirements listed in Sections A.2.1. and A.2.2.

1. **Verified Project Pipeline** – the Representative will be responsible for generating and maintaining a verified pipeline of projects and potential targets. The Representative will work with the Director of Foreign Direct Investment to complete the following deliverables which support the overall goal of job creation:
 - a. On a monthly basis, the Representative will work with ECD's FDI Director to agree on specific target companies and industries for the Representative to contact over the following month.
 - b. On a monthly basis, the Representative will meet with **a minimum of ten (10) prospective companies**. Details of these meetings and other meetings and events will be input into ECD's CRM system on a weekly basis by the Representative.

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- c. On a quarterly basis, the Representative will work with the FDI Director to submit to ECD's senior staff a review of the Representative's activities and an action plan for the following quarter.
 - d. On a semi-annual basis, the Representative will work with the FDI Director to submit an action plan for reaching out to a list of candidate companies for specific ECD projects including, but not limited to, the Memphis Regional Megasite and TRAC.
 - e. The Representative will conduct a monthly review and planning call with the Director of Foreign Direct Investment.
2. **Stakeholder/Multiplier Meetings** - On a monthly basis, the Representative will hold a minimum of four (4) stakeholder and multiplier meetings.
- f. On a monthly basis, the Representative will work with the FDI Director to agree upon a **minimum of four (4)** specific stakeholder and multiplier meetings or events to attend during the month. Stakeholders and multipliers indicate people or organizations that facilitate networking with potential target companies and can help strengthen Tennessee's reputation in the business community.
 - g. On a quarterly basis, the Representative will submit a brief written memo that 1) outlines major stakeholder and multiplier activities of the past quarter, 2) provides a brief outlook of the major upcoming stakeholders and multiplier meetings and events, and 3) makes recommendations for ECD team participation in future meetings and events (for example, recommending that a team of project managers attend a particular trade show or supplier conference).
The representative will collaborate with the Director of Foreign Investment and ECD Project Managers to develop an annual strategy and itinerary for participating in meetings and events with target stakeholders and multipliers.
3. **Visits to Tennessee and ECD Visits to Germany** - The Representative will visit Tennessee at least twice per year. The Representative will also be prepared to support visits by ECD and State of Tennessee officials to Germany at least twice per year.
- a. **Tennessee Visits** - The Representative will use this time to learn about ECD and Tennessee and to work with the ECD team to develop a strategic plan for the year. The Representative will work with the FDI Director to schedule these visits.
 - b. **ECD Visits** - The Representative will be expected to support two visits to Germany per year by ECD staff, potentially including the Commissioner and Governor. For these visits, the Representative will assist by coordinating travel, logistics, and accommodations as well as arranging meetings with prospects, existing companies, and stakeholders. The Representative may also be asked to assist with special events such as receptions or dinners with multiple invitees. These visits may require travel by the Representative within the Representative's country. -
4. **Other Duties**
- a. **Engage Existing Companies** - At the direction of the FDI Director, the Representative will be prepared to engage with companies in Germany who already have operations in Tennessee.
 - b. **Market Intelligence** - On a continuing basis, the Representative will follow a wide variety of media outlets in their country and be prepared to offer ECD insights and make recommendations about market strategy and potential targets.
 - c. **Marketing Strategy** - At the direction of the FDI Director, the Representative will collaborate with ECD's marketing Marketing team to determine a marketing strategy tailored to their specific market and target companies.

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d. Performing FDI Services for Other Parties – The Representative will not perform foreign direct investment recruiting activities for any other party without prior written consent from ECD.

A.3. **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.

A.4. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective on March 17, 2016 ("Effective Date") and extend for a period of twenty four (24) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

B.2. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to three (3) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Eight Hundred Twenty One Thousand, Three Hundred Dollars (\$821,300) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.



- C.2. **Compensation Firm.** The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Foreign Direct Investment Representative Services (paid in twelve (12) equal installments on a monthly basis)	\$ 154,260 per Year \$ 12,855 per Month
Additional Incremental Job Commitment Incentive: If Contractor exceeds minimum job commitments per year (as defined in Section A.2.1. above), Contractor will receive additional incremental job commitment incentives.*	\$2,500 each additional 50 job commitments, up to a maximum of \$10,000 per year of the contract.
*Contractor will not receive additional incremental job commitment incentives for fewer than 50 additional jobs (or next increment of 50 jobs) created.	

- C.4. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

ECD.Invoices@tn.gov

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Department of Economic and Community Development;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;



- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

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

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

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

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

- a. The Contractor shall complete, sign, and present to the State the W-8 form with original signatures along with the instructions for a wire

D. MANDATORY TERMS AND CONDITIONS:

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

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



The State:

Andrew Dunn, FDI Director
Department of Economic and Community Development
312 Rosa L. Parks Ave., 27th Floor, Nashville, TN 37243
Andrew.Dunn@tn.gov
615-253-1240

The Contractor:

Steffen Bayer
Guerickestrasse 37
80805 Muenchen (Munich)
GERMANY
steffenbayer@gmx.de
+49 160 998 126 55

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor



shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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

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

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

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or

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regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, 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.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities,



losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

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

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

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

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

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:



- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaroud plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.



- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
 - a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [Attachment A];
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

Steffen Bayer

March 11th, 2016

CONTRACTOR SIGNATURE

DATE

STEFFEN BAYER

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:



Randy Boyd

RANDY BOYD, COMMISSIONER

3/15/16
DATE



ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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

CONTRACTOR SIGNATURE

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

STEFFEN BAYER

PRINTED NAME AND TITLE OF SIGNATORY

March 11th, 2016

DATE OF ATTESTATION