



STATE OF TENNESSEE
DEPARTMENT OF TOURIST DEVELOPMENT

REQUEST FOR PROPOSALS
FOR
SALE OF STATE-OWNED MERCHANDISE

RFP # 32601-15017

RFP CONTENTS

SECTIONS:

1. INTRODUCTION
2. RFP SCHEDULE OF EVENTS
3. RESPONSE REQUIREMENTS
4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS
5. EVALUATION & CONTRACT AWARD

ATTACHMENTS:

- 6.1. Response Statement of Certifications & Assurances
- 6.2. Technical Response & Evaluation Guide
- 6.3. Financial Proposal & Scoring Guide
- 6.4. Reference Questionnaire
- 6.5. Score Summary Matrix
- 6.6. *Pro Forma* Contract

1. INTRODUCTION

The State of Tennessee, Department of Tourist Development, hereinafter referred to as “the State,” has issued this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL Tennessee qualified businesses, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, an opportunity to do business with the State as contractors, subcontractors or suppliers.

1.1. Statement of Procurement Purpose

The State intends to secure a revenue-generating Contract for the design, production, sale and fulfillment of products (severally and jointly referred to as the “Products”) featuring State-owned, federally registered, trademarked assets (severally and jointly referred to as the “Marks”) which will fund the cost of the aforementioned services. The Contract will generate revenue to the State from the sale of an assortment of Products screened/printed, produced, warehoused and fulfilled in Tennessee by the Contractor and such Products may include: Apparel (i.e., t-shirts, sweat-shirts, shirts, jackets and other seasonal apparel); accessories (i.e., hats, caps, ball caps, scarves); drinkware (i.e., coffee mugs, travel mugs, koozies, water bottles); merchandise (i.e., key rings, key chains, picture frames, magnets, plush toys) and other articles which display Marks owned by the State. The Contract will also provide for the collection of data generated from the sale of Products on-line, through wholesale and/or retail outlets by: Product Type; featured Mark of the Product; total sales per Product; date of purchase; purchaser’s mailing address; and, the total revenue payable to the State for each quarter of the State’s fiscal year. The State intends to have the Contract provide revenue to the State from the sale of Products which feature State-owned Marks.

1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details the State’s requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

1.3. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP 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, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4. RFP Communications

- 1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

RFP # 32601-15017

1.4.2. Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.

- 1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Nancy Hargiss-Tatlock, General Counsel
Department of Tourist Development
312 Rosa L. Parks Ave., 13th Fl.
Nashville, TN 37243-1102
(615) 741-9065
(615) 741-7225 (fax)
E-mail: Nancy.Hargiss-Tatlock@tn.gov

- 1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFP (visit <http://www.tn.gov/generalservices/article/godbe-general-contacts> for contact information); and
- b. 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 of 1990, and associated federal regulations:

Nancy Hargiss-Tatlock, General Counsel
Department of Tourist Development
312 Rosa L. Parks Ave., 13th Fl.
Nashville, TN 37243-1102
(615) 741-9065
(615) 741-7225 (fax)
E-mail: Nancy.Hargiss-Tatlock@tn.gov

- 1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.8).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other

means deemed reasonable by the State. For internet posting, please refer to the following website: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>.

- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. Assistance to Respondents With a Handicap or Disability

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. Respondent Required Review & Waiver of Objections

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

1.7. Pre-Response Conference

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

Department of Tourist Development
Tennessee Tower, 13th Fl.
Large Conference Room
312 Rosa L. Parks Ave.
Nashville, TN 37243

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, either in person or through participation in a conference call with the bridge line number(s) to be provided by the Solicitation Coordinator upon receipt of notice from a prospective Respondent's interest in participating on the conference call. Prospective Respondents must understand, however, that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2,

Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section 1.8 and on the date detailed in the RFP Section 2, Schedule of Events.

1.8. Notice of Intent to Respond

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate)
- a contact person's name and title
- the contact person's mailing address, telephone number, facsimile number, and e-mail address

A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.

1.9. Response Deadline

A Respondent must ensure that the State receives a response no later than the response Deadline time and date detailed in the RFP Section 2, Schedule of Events. A response must respond, as required, to this RFP (including its attachments) as may be amended. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

2. **RFP SCHEDULE OF EVENTS**

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

| EVENT | TIME (central time zone) | DATE |
|--|-----------------------------|----------------|
| 1. RFP Issued | | March 28, 2016 |
| 2. Disability Accommodation Request Deadline | 2:00 p.m. | March 31, 2015 |
| 3. Pre-response Conference | 10:00 a.m. | April 1, 2016 |
| 4. Notice of Intent to Respond Deadline | 2:00 p.m. | April 5, 2016 |
| 5. Written "Questions & Comments" Deadline | 2:00 p.m. | April 8, 2016 |
| 6. State Response to Written "Questions & Comments" | | April 15, 2016 |
| 7. Response Deadline | 2:00 p.m. | April 22, 2016 |
| 8. State Schedules Respondent Oral Presentations | | April 26, 2016 |
| 9. Respondents Oral Presentations | 8 a.m. – 4:00 p.m. | May 5, 2016 |
| 10. State Completes Written Technical Proposal Evaluations | | May 10, 2016 |
| 11. State Opening & Scoring of Financial Proposals | 2:00 p.m. | May 11, 2016 |
| 12. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection | 2:00 p.m. | May 12, 2016 |
| 13. End of Open File Period | | May 19, 2016 |
| 14. State sends contract to Contractor for signature | | May 20, 2016 |
| 15. Contractor Signature Deadline | 2:00 p.m. | May 25, 2016 |

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.8).

3. RESPONSE REQUIREMENTS

3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Financial Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amount of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should respond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
 - the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Financial Proposal.** A Financial Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Financial Proposal & Scoring Guide.

NOTICE: If a Respondent fails to submit a financial proposal exactly as required, the State may deem the response to be non-responsive and reject it.

- 3.1.2.1. A Respondent must only record the proposed revenue exactly as required by the RFP Attachment 6.3., Financial Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed financial proposal shall incorporate ALL revenue for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Financial Proposal.
- 3.1.2.4. A Respondent must submit the Financial Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Financial Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP.
- 3.2.2. A Respondent must submit original Technical Response and Financial Proposal documents and copies as specified below.

- 3.2.2.1. One (1) original Technical Response paper document labeled:

“RFP # 32601-15017 TECHNICAL RESPONSE ORIGINAL”

and SIX (6) digital copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 32601-15017 TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.

- 3.2.2.2. One (1) original Financial Proposal paper document labeled:

“RFP # 32601-15017 FINANCIAL PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “PDF” format properly recorded on separate, blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 32601-15017 FINANCIAL PROPOSAL COPY”

In the event of a discrepancy between the original Financial Proposal document and the digital copy, the original, signed document will take precedence.

- 3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

- 3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

“DO NOT OPEN... RFP # 32601-15017 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.2. The Financial Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN... RFP # 32601-15017 FINANCIAL PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.3. The separately, sealed Technical Response and Financial Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP # 32601-15017 SEALED TECHNICAL RESPONSE & SEALED FINANCIAL PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

Nancy Hargiss-Tatlock, General Counsel
Department of Tourist Development
312 Rosa L. Parks Ave., 13th Fl.
Nashville, TN 37243
(615) 741-9065

3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Financial Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Financial Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Financial Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Financial Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Financial Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Financial Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

3.3.8. 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 RFP:

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

3.3.8.2. 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

3.3.8.3. 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.

3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Financial Proposal must only record the proposed revenue as required in this RFP and must not record any other rates, amounts, or information.

NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.

3.7. **Response Preparation Costs.**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.8). A response must address the final RFP (including its attachments) as amended.

4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.6. Insurance

From time-to-time, the State may require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

4.7. Professional Licensure and Department of Revenue Registration

- 4.7.1. 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 RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful 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.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful 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 solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

4.8. Disclosure of Response Contents

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Respondents submitting timely responses may be available to the public, upon request, after technical responses are opened.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7).

4.9. Contract Approval and Contract Payments

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.

- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.
- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract start date or after the Contract end date.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma* Contract, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

4.11. **Contract Amendment**

After contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the contract and this RFP, but beyond the specified scope of service, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

| EVALUATION CATEGORY | MAXIMUM POINTS POSSIBLE |
|---|-------------------------|
| General Qualifications & Experience (refer to RFP Attachment 6.2., Section B) | 10% |
| Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C) | 40% |
| Interview Evaluations (refer to RFP Attachment 6.2., Section D) | 20% |
| Financial Proposal (refer to RFP Attachment 6.3.) | 30% |

5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A - Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

- 5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP, and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.
 - 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
 - 5.2.1.5. Before Financial Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not to meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Interview and Financial Proposal Evaluations and potential contract award, the team members will fully document the determination.
- 5.2.2. **Interview Evaluations.** The Solicitation Coordinator will calculate the sum of the Technical Proposal scores to determine the three best evaluated Proposers. The three best evaluated Proposers will be invited to participate in the Interview Process. All other Proposers will be removed from consideration for award.
- 5.2.2.1. The Solicitation Coordinator will randomly schedule Proposer presentations during the period indicated by RFP Section 2, Schedule of Events. Random scheduling precludes any consideration of Proposer time or date scheduling preferences or related requests. When the Proposer presentation schedule has been determined, the Solicitation Coordinator will contact Proposers with the relevant information as indicated by the RFP Section 2, Schedule of Events.
 - 5.2.1.2. Proposer presentations will be open only to the invited Proposers, Proposal Evaluation Team members, the Solicitation Coordinator, and any technical consultants that may be selected by the State to provide assistance to the Proposal Evaluation Team.
 - 5.2.1.3. Proposer presentations will be limited to addressing the items detailed in RFP Attachment 6.2., Technical Proposal & Evaluation Guide, Section D. However, the State holds the right to ask any clarifying questions about any section of the proposal.
 - 5.2.1.4. The State will maintain an accurate record of each Proposer's oral presentation session, and such record shall be available for review when the State opens the procurement files for public inspection.
 - 5.2.1.5. Proposal Evaluation Team members will independently evaluate each oral presentation in accordance with the RFP Attachment 6.2., Technical Proposal & Evaluation Guide, Section D.
 - 5.2.1.6. The Solicitation Coordinator will calculate and document the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Proposal & Evaluation Guide, Section D, and record that number as the score for said Technical Proposal section.
- 5.2.3. **Financial Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Financial Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Financial Proposal score in accordance with the RFP Attachment 6.3., Financial Proposal & Scoring Guide.

- 5.2.4. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Financial Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

5.3. **Contract Award Process**

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Financial Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Financial Proposal to determine (or re-determine) the apparent best-evaluated response.

RFP # 32601-15017 STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma Contract* for the total contract period.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma Contract*.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Respondent will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Financial Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Financial Proposal opening and thereafter in accordance with any contract pursuant to the RFP.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the signatory is not the Respondent (if an individual) or the Respondent's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the Respondent.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT

SIGNATURE:

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

**RESPONDENT FEDERAL EMPLOYER IDENTIFICATION NUMBER (or
SSN):**

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

| RESPONDENT LEGAL ENTITY NAME: | | | |
|--|-----------|---|-----------|
| Response Page # (Respondent completes) | Item Ref. | Section A— Mandatory Requirement Items | Pass/Fail |
| | | The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events. | |
| | | The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i>). | |
| | | The Technical Response must NOT contain cost or pricing information of any type. | |
| | | The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response. | |
| | | A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.). | |
| | | A Respondent must NOT submit multiple responses in different forms (as a prime and a sub-contractor) (refer to RFP Section 3.3.). | |
| | A.1. | Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification. | |
| | A.2. | Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award. | |
| | A.3. | Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months. | |
| | A.4. | Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months. | |
| | A.5. | Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a | |

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|---|------------------|---|------------------|
| RESPONDENT LEGAL ENTITY NAME: | | | |
| Response Page # (Respondent completes) | Item Ref. | Section A— Mandatory Requirement Items | Pass/Fail |
| | | satisfactory credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.) | |
| <i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i> | | | |

RFP ATTACHMENT 6.2. — SECTION B

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

| | | |
|--|------------------|---|
| RESPONDENT LEGAL ENTITY NAME: | | |
| Response Page # (Respondent completes) | Item Ref. | Section B— General Qualifications & Experience Items |
| | B.1. | Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response. |
| | B.2. | Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile). |
| | B.3. | Detail the number of years the Respondent has been business. |
| | B.4. | Briefly describe how long the Respondent has been providing the goods or services required by this RFP. |
| | B.5. | Describe the Respondent's number of employees, client base, and location of offices. |
| | B.6. | Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details. |
| | B.7. | Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details. |
| | B.8. | Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details. |
| | B.9. | Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions. |
| | B.10. | Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will |

| RESPONDENT LEGAL ENTITY NAME: | | |
|---|-----------|---|
| Response Page # (Respondent completes) | Item Ref. | Section B— General Qualifications & Experience Items |
| | | impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions. |
| | B.11. | Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.). |
| | B.12. | Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP. |
| | B.13. | Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent's requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual's title, education, current position with the Respondent, and employment history. |
| | B.14. | Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent's requirements of any contract awarded pursuant to this RFP, and if so, detail: (a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each; (b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; and (c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFP. |
| | B.15. | Provide documentation of the Respondent's commitment to diversity as represented by the following: (a) <u>Business Strategy</u> . Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable. (b) <u>Business Relationships</u> . Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information: (i) contract description; (ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled); (iii) contractor contact name and telephone number. (c) <u>Estimated Participation</u> . Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information: (i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS); |

| RESPONDENT LEGAL ENTITY NAME: | | |
|---|-----------|---|
| Response Page # (Respondent completes) | Item Ref. | Section B— General Qualifications & Experience Items |
| | | <p>(ii) anticipated goods or services contract descriptions;</p> <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p> |
| | B.16. | <p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract's scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. ▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted. |
| | B.17. | <p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u> ▪ three (3) completed projects. <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</p> <p>(a) Add the Respondent's name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <p>(i) complete the reference questionnaire;</p> |

| | | |
|--|------------------|--|
| RESPONDENT LEGAL ENTITY NAME: | | |
| Response Page # (Respondent completes) | Item Ref. | Section B— General Qualifications & Experience Items |
| | | <p>(ii) sign and date the completed reference questionnaire;</p> <p>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</p> <p>(iv) sign his or her name in ink across the sealed portion of the envelope; and</p> <p>(v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</p> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. ▪ The State is under <u>no</u> obligation to clarify any reference information. |
| | B.18. | <p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence 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;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</p> <p>has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p> |
| | | <p>SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = 10)</p> |
| State Use – Evaluator Identification: | | |

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

| RESPONDENT LEGAL ENTITY NAME: | | | | | |
|---|-----------|---|---|--|--------------------|
| Response Page # (Respondent completes) | Item Ref. | Section C— Technical Qualifications, Experience & Approach Items | Item Score | Evaluation Factor | Raw Weighted Score |
| | C.1. | Provide a narrative that illustrates the Respondent's understanding of the State's requirements and a proposed project schedule. | | 10 | |
| | C.2. | Provide a list of Respondent's clients during the 2015 calendar year. | | 20 | |
| | C.3. | Provide a narrative of how the Respondent plans to market the merchandise/products which Respondent will produce, sell and fulfill pursuant to the terms of the <i>Pro Forma Contract</i> , Attachment 6.6 hereof. | | 20 | |
| | C.4. | Provide samples of the merchandise/products which Respondent designed, produced and sold including information about the sales price at which such products were sold in 2015. | | 20 | |
| | C.5 | Provide a list of the wholesale and retail outlets selling similar merchandise/products for Respondent/Respondent's clients during the 2015 calendar year. | | 20 | |
| | C.6. | Provide a narrative explaining how Respondent plans to accumulate and provide the State data with regards to Product sales. Also, how will Respondent plan to modify either the Product (or Products) being sold or the marketing plan designed to sell such Products in the event sales figures are minimal. | | 10 | |
| The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point. | | | | Total Raw Weighted Score: (sum of Raw Weighted Scores above) | |
| $\frac{\text{Total Raw Weighted Score}}{\text{Maximum Possible Raw Weighted Score}}$ <i>(i.e., 5 x the sum of item weights above)</i> | | | $\times 40$ <i>(maximum possible score)</i> | | = SCORE: |
| State Use – Evaluator Identification: | | | | | |

| | | | | | |
|---|------------------|---|-------------------|--------------------------|---------------------------|
| RESPONDENT LEGAL ENTITY NAME: | | | | | |
| Response Page # (Respondent completes) | Item Ref. | Section C— Technical Qualifications, Experience & Approach Items | Item Score | Evaluation Factor | Raw Weighted Score |
| <i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i> | | | | | |

TECHNICAL PROPOSAL & EVALUATION GUIDE

SECTION D: ORAL PRESENTATION. The Proposer must address ALL Oral Presentation Items (below).

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the presentation response to each item. Each evaluator will use the following whole-number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The RFP Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section score as indicated.

| | | | | |
|--|--|---|--------------------------|---------------------------|
| PROPOSER LEGAL ENTITY NAME: | | | | |
| Oral Presentation Items | | Item Score | Evaluation Factor | Raw Weighted Score |
| D.1. | Introduction by Respondent of the staff members who would be rendering the services set forth in the RFP including both the staff participating in the Oral Presentation and those not present, with background information about all of Respondent's staff who would be working on the State's account. | | 20 | |
| D.2. | Presentation of Respondent's Proposal for the services set forth in the RFP. | | 25 | |
| D.3. | Presentation of creative, design and marketing recommendations to sell merchandise featuring the State's Marks. | | 25 | |
| D.4. | Respondent's presentation should include a discussion about the merchandise produced and sold by Respondent, in particular with items which could feature State Marks including merchandise samples and information about the product sales of those items. | | 30 | |
| Total Raw Weighted Score <i>(sum of Raw Weighted Scores above):</i> The RFP Coordinator will use this sum and the formula below to calculate the score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations. | | | | |
| total raw weighted score | | | | |
| maximum possible raw weighted score <i>(i.e., 5 x the sum of item weights above)</i> | | X 20 <i>(maximum section score)</i> | = SCORE: | |
| <i>State Use – Evaluator Identification:</i> | | | | |
| <i>State Use – RFP Coordinator Signature, Printed Name & Date:</i> | | | | |

RFP ATTACHMENT 6.3.

FINANCIAL PROPOSAL & SCORING GUIDE

NOTICE: THIS FINANCIAL PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

FINANCIAL PROPOSAL SCHEDULE— The Financial Proposal, detailed below, shall indicate the proposed revenue for the entire scope of service including all services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Financial Proposal shall remain valid for at least 120 days subsequent to the date of the Financial Proposal opening and thereafter in accordance with any contract resulting from this RFP. All Proposed Revenue Percentages shall be limited to two (2) places to the right of the decimal point, for example XX.XX%.

NOTICE: The Evaluation Factor associated with each financial item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum revenue quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Proposer.

Notwithstanding the financial items herein, pursuant to the second paragraph of the pro forma contract section C.1. (refer to RFP Attachment 6.6.), "The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract."

This Financial Proposal must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the proposing entity.

| | | | |
|---|---|--------------------------|--|
| PROPOSER SIGNATURE: | | | |
| PRINTED NAME & TITLE: | | | |
| DATE: | | | |
| PROPOSER LEGAL ENTITY NAME: | | | |
| Financial Item Description | Proposed Revenue Percentage to State | Evaluation Factor | Evaluation Amount (amount x factor) |
| Percent of gross revenue from the sale of Products listed on Exhibit "A-1" (attached hereto) which shall be payable to the State pursuant to <i>Pro Forma</i> contract Section C.4.a. | _____ % | 50 | |
| Percent of gross revenue from the sale of Products listed on Exhibit "A-2" (attached hereto) which shall be payable to the State pursuant to <i>Pro Forma</i> contract Section C.4.b. | _____ % | 20 | |
| Percent of gross revenue from the sale of Products listed on Exhibit "A-3" (attached hereto) which shall be payable to the State pursuant to <i>Pro Forma</i> contract Section C.4.c. | _____ % | 20 | |

| | | | |
|---|---|--------------------------|--|
| PROPOSER LEGAL ENTITY NAME: | | | |
| Financial Item Description | Proposed Revenue Percentage to State | Evaluation Factor | Evaluation Amount (amount x factor) |
| Percent of gross revenue from the sale of Products listed on Exhibit "A-4" (attached hereto) which shall be payable to the State pursuant to <i>Pro Forma</i> contract Section C.4.d. | _____ % | 10 | |
| EVALUATION AMOUNT (sum of evaluation amounts above): | | | |
| The RFP Coordinator will use this sum and the formula below to calculate the Financial Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations. | | | |
| Evaluation amount being evaluated _____ | | | |
| Highest evaluation amount from <u>all</u> proposals | | | x 30 (maximum section score) |
| | | | = SCORE: |
| <i>State Use – RFP Coordinator Signature, Printed Name & Date:</i> | | | |

REFERENCE QUESTIONNAIRE

The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

RFP # 32601-15017 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire;
- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

(1) **What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

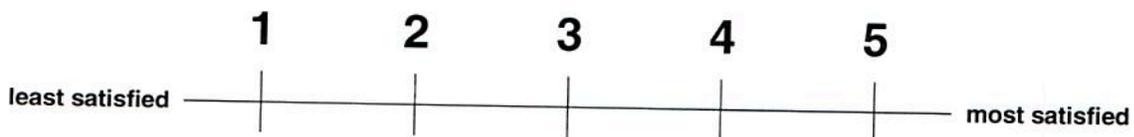
(2) **Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

| | |
|------------------------|--|
| NAME: | |
| TITLE: | |
| TELEPHONE # | |
| E-MAIL ADDRESS: | |

(3) **What goods or services does/did the reference subject provide to your company or organization?**

(4) **What is the level of your overall satisfaction with the reference subject as a vendor of the goods or services described above?**

Please respond by circling the appropriate number on the scale below.



If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.

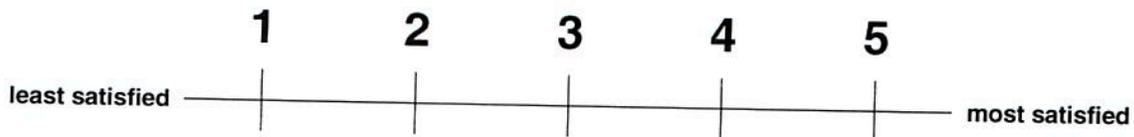
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?

- (8) In what areas of goods or service delivery does/did the reference subject excel?

- (9) In what areas of goods or service delivery does/did the reference subject fall short?

- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?

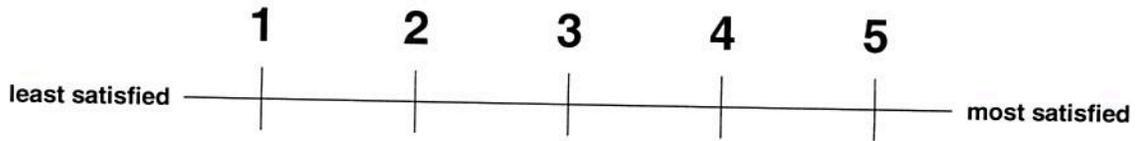
Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

- (11) Considering the staff assigned by the reference subject to deliver the goods or services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

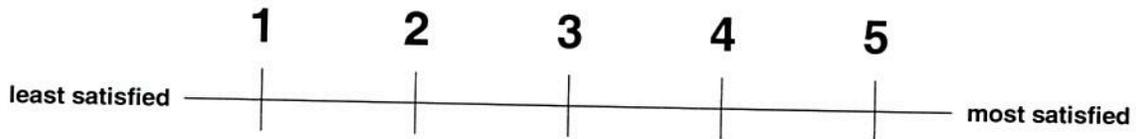
Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

- (12) Would you contract again with the reference subject for the same or similar goods or services?

Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

(must be the same as the signature across the envelope seal)

DATE:

SCORE SUMMARY MATRIX

| | <i>RESPONDENT NAME</i> | | <i>RESPONDENT NAME</i> | | <i>RESPONDENT NAME</i> | |
|---|------------------------|--|------------------------|--|------------------------|--|
| GENERAL QUALIFICATIONS & EXPERIENCE (maximum: 10) | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | AVERAGE: | | AVERAGE: | | AVERAGE: | |
| TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: 40) | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | AVERAGE: | | AVERAGE: | | AVERAGE: | |
| ORAL PRESENTATION (maximum: 20) | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | AVERAGE: | | AVERAGE: | | AVERAGE: | |
| FINANCIAL PROPOSAL (maximum: 30) | | | | | | |
| <i>Solicitation Coordinator Signature, Printed Name & Date:</i> | | | | | | |

RFP # 32601-15017 *PRO FORMA* CONTRACT

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE
DEPARTMENT OF TOURIST DEVELOPMENT
AND
CONTRACTOR**

This Contract, by and between the State of Tennessee, Department of Tourist Development, hereinafter referred to as the "State" and Contracting Party's Legal Entity Name, hereinafter referred to as the "Contractor," is a revenue-generating Contract as a result of the sale of an assortment of products, the "Products," featuring State-owned, federally, registered trademarks, referred to herein as the "Marks." The Contractor will also collect data generated from the sale of the Products for use by the State, as further defined in the "SCOPE OF SERVICES."

The Contractor is a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.
Contractor's Place of Incorporation or Organization: Tennessee
Contractor Edison Registration ID Number:

A. SCOPE OF SERVICES:

- 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 in this Contract.
- A.2. Promotion, Production and Fulfillment Services.
 - A.2.1. Contractor shall have the right to develop, produce, promote, sell and fulfill products featuring federally, registered Marks owned by the State asset forth on Exhibit "B," which may be amended from time to time on the products attached to the Contract on Exhibits "A(1-4)" (the "Products").
 - A.2.2. Contractor shall develop, produce, sell, warehouse and handle fulfillment of the Products set forth in this Contract in accordance with all appropriate state laws.
 - A.2.3. The Products shall be self-supporting with no funding coming from the State. All costs to develop, produce, promote, sell, collect revenue, warehouse and fulfill the Products shall come from revenue generated from the sale of Products by Contractor. Contractor shall have the right to sell pre-approved Products by way of a link to the State's website, www.tnvacation.com, as well as on any other website and/or wholesale or retail outlet provided it has been pre-approved by the State.
 - A.2.4. The State shall have the right to approve the design and quality of the materials used in production of the Products and Contractor shall provide the State at least thirty (30) days advance notice with sample(s) of proposed Products for approval before a given Product may be sold by Contractor on-line and/or by any other means pre-approved by the State to consumers.
 - A.2.5. Contractor acknowledges that the State may elect to change the design, and other aspects of a Product or line of Products to be sold at no cost to the State. The State will provide Contractor reasonable notice of its intent to change a Product or line of Products to avoid undue hardship and/or expense to Contractor.
 - A.2.6. Contractor is responsible for protection of the Products which display the State's Marks (also referred to as "State-owned assets") from duplication, theft and/or any type of misuse by third parties.
 - A.2.7. Any and all Products sold by way of a link to the State's website, www.tnvacation.com, and/or by any other means, must be pre-approved by the State and the design, promotion and/or the placement of ads must be appropriate for the purchase by consumers of Products which contain State-owned assets (i.e., not used in association with tobacco, alcohol, an illegal substance, or at

a sales location which could be deemed inappropriate for children, teens or adults such as with pornographic, derogatory or violent products and/or materials).

- A.2.8. All Products sold pursuant to this Contract shall contain State-owned Marks without use of a third party's name (unless pre-approved by the State), a third party's registered trademark or any other identifying mark other than a label identifying Contractor or a pre-approved subcontractor working with Contractor to produce, distribute and/or manufacture the Products, although all Product labeling shall be pre-approved by the State.
- A.2.9. Contractor shall process and handle all revenue collection from the sale of Products pursuant to this Contract as well as warehousing and fulfillment responsibilities to consumers of the Products.
- A.2.10. Contractor shall be responsible for the supervision of Contractor's staff for all of the Products placed in the marketplace from design, promotion, production, sale, warehousing and fulfillment, with the State having final approval of the design and prototype of all such Products. The State reserves the right to examine the quality of the work in progress at any stage, and will have the option to be on site and also cancel production if necessary for a given Product or line of Products.
- A.2.11. Contractor shall furnish the State any overruns of Products produced at no cost to the State. Contractor shall not sell any such Products or ship any overruns of the Products subject to this Contract to any individual or entity other than the State or its designee(s) unless the transaction has been pre-approved by the State.
- A.2.12. Contractor shall furnish the State with a reasonable quantity of Products for use at State sponsored events (i.e., Governor's Conference and other tourism promotional events) at agreed upon discounted rates which have been mutually agreed to as between Contractor and the State. The State must, however, provide Contractor notice at least thirty (30) days prior to the date that such Products will be needed with information as to the quantity and sizes needed for each such event. In addition, Contractor may sell Products at State sponsored or attended events with the State's prior written approval.
- A.2.13. Contractor shall produce, sell and fulfill the following types of Products, all of which shall incorporate one of the State's registered Marks as set forth on Exhibit "B," to consumers:
- a. Apparel (i.e., t-shirts, sweatshirts, jackets as set forth on Exhibit "A(1)")
 - b. Accessories (i.e., hats, baseball caps, knit caps, scarves as set forth on Exhibit "A(2)");
 - c. Drinkware (i.e., coffee mugs, travel mugs, water bottles, koozies as set forth on Exhibit "A(3)"); and,
 - d. Merchandise (i.e., key rings, key chains, picture frames, magnets, plush toys as set forth on Exhibit "A (4)").
- A.2.14. Contractor and/or the State shall have the right to discontinue a given Product or Product line if it mutually determined by Contractor and the State that a certain Product or line of Products are not selling well to consumers and/or the Product or Product line is not effectively promoting Tennessee tourism.
- A.2.15. Upon completion or termination of this Contract, all data, information and material gathered or produced in connection with the Products shall become the property of the State including any Products which were manufactured by Contractor but not sold during the term of the Contract, although Contractor shall be entitled to a six (6) month sell off period for Products, subject however, to the State's prior approval.
- A.2.16. Contractor shall ensure that all Products sold pursuant to this Section A.2. of the Contract, are professional in appearance and compliant with an overall style of appropriate material using State owned Marks on Products sold to the general public.

A.3. Additional Advertising, Production, Warehousing and Fulfillment Services:

- A.3.1. Contractor shall develop, produce, market and sell all Products which have been pre-approved by the State by the following means: A link to the State tourism website, www.tnvacation.com; and, through wholesale and retail outlets. The Products may be promoted through media releases, printed materials and/or other marketing options which promote Tennessee tourism provided the State has pre-approved any such promotional and/or sales efforts. The State must, however, pre-approve all Products proposed for sale by Contractor within five (5) business days of the State's receipt of samples of the Products along with the proposed means by which Contractor plans to sell such Products.
- A.3.2. Contractor shall be responsible for all aspects of the production, promotion, sales, revenue collection, warehousing and fulfillment of Products purchased by consumers pursuant to Sections A.2. and A.3. hereof and work in conjunction with the State to market the Products to consumers.

A.4. Database Collection Services.

- A.4.1. Contractor will establish a method of securing information, to confirm and insure the accuracy of information about the sale of Products subject to this Contract. The information that Contractor shall furnish the State about Products purchased by consumers includes the following:
- a. A breakdown by the type of Product sold (i.e., apparel, accessories, drinkware, merchandise);
 - b. The quantity of each Product sold;
 - c. Information about the purchaser including the purchaser's name, e-mail address and zip code; and,
 - d. Any comments received from consumers or potential consumers about any of the Products.
- A.4.2. Contractor will provide the information set forth in Section A.4.1. to the State on a semi-annual basis (for the periods ending June 30th and December 31st of each year) throughout the term of the Contract.
- A.5. All Product types which are set forth in Section A.2.13. and Exhibits "A(1-4)" upon acceptance by the State may be sold, promoted and fulfilled pursuant to the terms of the Contract including other subsequently pre-approved Product, seasonal or otherwise, of a similar type or nature (i.e., apparel, merchandise, accessories...). Contractor must, however, provide reliable information and data from reputable sources to support any proposed change in the Product(s) offered for sale to consumers and any such change shall be pre-approved by the State in writing.
- A.6. Contractor shall be responsible for all the costs required to design, develop, produce, promote, warehouse and fulfill the Products referenced in this Section A.

B. TERM OF CONTRACT:

This Contract shall be effective on May 2, 2016 ("Effective Date"), and extend for a period of sixty (60) 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.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. There shall be no cost to the State for the performance of services under this Contract as described by Section A of this Contract.
- C.2. The Contractor's sole remuneration for all the services and deliverables set forth in Section A.2.13. of this Contract shall be the difference between the amount of money collected by Contractor from the sale of Products and the cost to design, develop, promote, produce,

warehouse and fulfill the Products and payment of the percentage of gross sales revenue payable to the State set forth in Section C.4. below for:

- a. Apparel Products set forth in Section A.2.13.(a);
 - b. Accessory Products set forth in Section A.2.13.(b);
 - c. Drinkware Products set forth in Section A.2.13.(c); and,
 - d. Merchandise Products set forth in Section A.2.13.(d);
- C.3. It is agreed that the Contractor shall be the recipient of the revenue collected from the sale of Product(s) permitted under this Contract, and each semi-annual period of the Contract, Contractor shall remit the following payments to the State along with documentation of all gross revenue received from the sale for the following Products during each semi-annual period of the Contract as defined in Section C.5.:
- C.4. The percent of gross sales received by Contractor which is payable to the State is as follows:
- a. An amount equal to NUMBER percent (NUMBER %) of gross sales received by Contractor for Products sold pursuant to Section C.2.(a).;
 - b. An amount equal to NUMBER percent (NUMBER %) of gross sales received by Contractor for Products sold pursuant to Section C.2.(b).;
 - c. An amount equal to NUMBER percent (NUMBER %) of gross sales received by Contractor for Products sold pursuant to Section C.2.(c).; and,
 - d. An amount equal to NUMBER percent (NUMBER %) of gross sales received by Contractor for Products sold pursuant to Section C.2.(d).
- C.5. The Contractor, as the recipient of all revenue paid pursuant to this Contract (as set forth in Section C.4. above), shall provide semi-annual accountings based on the State's fiscal year (beginning on July 1st of the first year and ending on June 30th of the following year). The semi-annual accountings shall include, but not be limited to, the total of all revenue collected by Contractor which shows the source(s) of such revenue and the monies payable or paid to the State during each semi-annual accounting time period. The initial, semi-annual accounting period will end on June 30, 2016, and continue thereafter every six (6) months until the end of the Contract with the exception of the final accounting period which shall end on May 1, 2021, unless otherwise terminated in accordance with the terms and conditions of the Contract. The State shall be paid the revenue pursuant to the Contract within sixty (60) days of end of each semi-annual accounting period of the State's fiscal year (December 31st and June 30th) with the exception of the final quarter which will end on May 1, 2021.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract 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).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.
- Upon such termination, the Procuring Party shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).
- D.6. Conflicts of Interest. The Procuring Party warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure 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 State or the Procuring Party on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon 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 such 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 hereto.
- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*

- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.16. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D. 18. HIPAA Compliance. The State and Procuring Party 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").
- D.18.1. Procuring Party 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.
- D.18.2. Procuring Party 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.
- D.18.3. The State and the Procuring Party 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 Procuring Party in compliance with the Privacy Rules. This provision shall not

apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.

D.18.4. The Procuring Party will indemnify the State and hold it harmless for any violation by the Procuring Party 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.

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, these special terms and conditions shall control.

E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Nancy Hargiss-Tatlock, General Counsel
Department of Tourist Development
312 Rosa L. Parks Ave., 13th Fl.
Nashville, TN 37243-1102
Email Address: Nancy.Hargiss-Tatlock@tn.gov
Telephone Number: (615) 741-9065
Fax Number: (615) 741-7225

The Contracting Party:

Procuring Party Contact Name & Title
Procuring Party Name
Address
Email Address
Telephone # Number
FAX # Number

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

E.3 Tennessee Department of Revenue Registration. The Procuring Party shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

E.4. Debarment and Suspension. The Procuring Party certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

E.4.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

- E.4.2. 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 offence 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;
- E.4.3. 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 E.4.2. of this certification; and,
- E.4.4. 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 Procuring Party 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.

- E.5. State Furnished Property. The Procuring Party shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Procuring Party's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Procuring Party shall be responsible to the State for the residual value of the property at the time of loss.
- E.6. Prohibited Advertising. The Procuring Party shall not refer to this Contract or the Procuring Party's relationship with the State hereunder in commercial advertising in such a manner as to state or imply an endorsement by the State. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

IN WITNESS WHEREOF,

PROCURING PARTY LEGAL ENTITY NAME:

PROCURING PARTY SIGNATURE **DATE**

PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

DEPARTMENT OF TOURIST DEVELOPMENT:

Kevin R. Triplett, Commissioner **DATE**

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|--|--|
| SUBJECT CONTRACT NUMBER: | |
| CONTRACTOR LEGAL ENTITY NAME: | |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number) | |

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. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

EXHIBIT "A(1)"
PROTO-TYPE
Apparel for Men

Proto-type Apparel for men (Size L) with use of Made in Tennessee mark (see Exhibit "B") on each item at the estimated retail prices set forth below for purposes of this RFP:

| <u>Description</u> | <u>Est. Retail Price for 100</u> | <u>Est. Retail Price for 500</u> | <u>Est. Retail Price for 1,000</u> |
|--|----------------------------------|----------------------------------|------------------------------------|
| a) <u>T-shirt</u> - short sleeve (Linen-blend tee) | \$ _____ | \$ _____ | \$ _____ |
| b) <u>Sweatshirt</u> - long sleeve (Crewneck; 90 cotton/ 10 polyester) | \$ _____ | \$ _____ | \$ _____ |
| TOTAL Exhibits "A(1)(a-b)" | \$ _____ | \$ _____ | \$ _____ |

These totals as well as the totals set forth on Exhibits "A(2-4)" will be used to calculate the revenue payable to the State pursuant to Respondent's Financial Proposal on Attachment 6.3. of this RFP. Additional items may be added including varying apparel for men, women and/or children with types and sizes to be determined by Respondent, subject however to the State's prior approval.

EXHIBIT "A(2)"
PROTO-TYPE
Accessories for Men

Proto-type Accessory assortment for men (Size L) with use of Made in Tennessee mark (see Exhibit "B") on each item) at the estimated retail prices set forth below for purposes of this RFP:

| <u>Description</u> | <u>Est. Retail Price for 100</u> | <u>Est. Retail Price for 500</u> | <u>Est. Retail Price for 1,000</u> |
|--|----------------------------------|----------------------------------|------------------------------------|
| a) <u>Ball cap</u> (Six-panel unstructured cap, cotton sheeting, sweatband hook-and-loop closure) | \$ _____ | \$ _____ | \$ _____ |
| b) <u>Knit cap</u> (Acrylic beanie, one size fits all) | \$ _____ | \$ _____ | \$ _____ |
| TOTALS - Exhibits "A(2)(a-b)" | \$ _____ | \$ _____ | \$ _____ |

These totals as well as the totals set forth on Exhibits "A(1, 3, 4)" will be used to calculate the revenue payable to the State pursuant to Respondent's Financial Proposal on Attachment 6.3. of this RFP. Additional items may include varying accessories for men, women and/or children with sizes, types and other assorted elements to be determined by Respondent, subject however to the State's prior approval.

EXHIBIT "A(3)"

PROTO-TYPE

Drinkware

Proto-type assortment of Drinkware with use of Made in Tennessee mark (see Exhibit "B") on each item at the estimated retail prices set forth below for purposes of this RFP:

| <u>Description</u> | <u>Est. Retail Price for 100</u> | <u>Est. Retail Price for 500</u> | <u>Est. Retail Price for 1,000</u> |
|---|----------------------------------|----------------------------------|------------------------------------|
| a) <u>Coffee Mugs</u> (Ironstone ceramic, 3-1/8" dia. x 3-3/4"h, large C-handle, glossy exterior/interior) | \$ _____ | \$ _____ | \$ _____ |
| b) <u>Travel Mugs</u> (Stainless steel, Polypropylene Plastic, 3-1/2" dia. x 6-1/4"h, 17 oz.) | \$ _____ | \$ _____ | \$ _____ |
| c) <u>Koozies</u> (Polyester, Collapsible koozie, 3-7/8"w x 5-1/4"h x 1/8" dia.) | \$ _____ | \$ _____ | \$ _____ |
| TOTALS - Exhibits "A(3)(a-c)" | \$ _____ | \$ _____ | \$ _____ |

These totals as well as the totals set forth on Exhibits "A(1, 2, 4)" will be used to calculate the revenue payable to the State pursuant to Respondent's Financial Proposal on Attachment 6.3. of this RFP. Additional items may be added in varying sizes and assortments to be determined by Respondent, subject however to the State's prior approval.

EXHIBIT "A(4)"
PROTO-TYPE
Merchandise - Product Type

Proto-type assortment of Merchandise with use of Made in Tennessee mark (see Exhibit "B") on each item at the suggested retail prices set forth below for purposes of this RFP:

| <u>Description</u> | <u>Est. Retail Price for 100</u> | <u>Est. Retail Price for 500</u> | <u>Est. Retail Price for 1,000</u> |
|--|----------------------------------|----------------------------------|------------------------------------|
| a) <u>Key Chains</u> (Floating keychain, ball chain, unattached, 3-1/4" w x 1-7/16" h x X 3/4" dia.) | \$ _____ | \$ _____ | \$ _____ |
| b) <u>Magnets</u> (4" circle magnet, 4" dia.; 20 mil.) | \$ _____ | \$ _____ | \$ _____ |
| c) <u>Plush toys</u> (10" black bear w/ tee) | \$ _____ | \$ _____ | \$ _____ |
| TOTALS - Exhibits "A(4)(a-c)" | \$ _____ | \$ _____ | \$ _____ |

These totals as well as the totals set forth on Exhibits "A(1-3)" will be used to calculate the revenue payable to the State pursuant to Respondent's Financial Proposal on Attachment 6.3. of this RFP. Additional items may be added in varying types, sizes and assortment to be determined by Respondent, subject however to the State's prior approval.

EXHIBIT "B"

TRADEMARK ("Marks" referred to in the RFP)

- a. The Soundtrack of America. Made in Tennessee:



- b. Made in Tennessee:

Made in Tennessee

- c. The Tennessee Music Pathway



- d. Tennessee Trails



- e. Other State-owned Marks (as may be needed)