A. Solicitation – Invitation to Bid

A.1. Pre-Response Conference Notification

The Central Procurement Office will hold three (3) separate Pre-Response Conference sessions for this solicitation at the date, times, and location specified below. Each of the three (3) job types covered in the Scope of Work will have its own specified Pre-Response Conference. Prospective Respondents are encouraged to attend the applicable Pre-Response Conference session(s); however attendance is not mandatory in order to submit a Response. Note: each conference session will go over the general changes to the contract but will also contain specific information to each job type so it is recommended to attend as many sessions as apply to the prospective respondent's scope.

The Central Procurement Office conducts Pre-Response Conferences to discuss the draft solicitation, gather information, and give prospective respondents an opportunity to ask questions about the draft solicitation and the State's contracting process. The Pre-Response Conference is for information purposes only. Nothing stated at the Pre-Response Conference shall change the solicitation unless the change is reflected in writing in the formal Invitation to Bid ("ITB").

This document is a draft solicitation for informational purposes only. Information received at the Pre-Response Conference will help the Central Procurement Office finalize the solicitation. After the Pre-Response Conference, the final version of the formal ITB will be distributed to prospective respondents on the State's list. The formal ITB will have a designated closing date and time and must be completed and returned for responding purposes.

Electrical:

Date & Time:	June 16, 2015 9:00am – 10:30am CST
Location:	WRS Tennessee Tower 312 Rosa L Parks Avenue Nashville, TN 37243
Room:	3rd Floor Conference Room E

HVAC:

Date & Time:	June 16, 2015 10:45am – 12:15pm CST
Location:	WRS Tennessee Tower 312 Rosa L Parks Avenue Nashville, TN 37243
Room:	3rd Floor Conference Room E

Plumbing:

Date & Time:	June 16, 2015 1:30pm – 3:00pm CST
Location:	WRS Tennessee Tower 312 Rosa L Parks Avenue Nashville, TN 37243
Room:	3rd Floor Conference Room E

Communications and Contacts: Address all inquiries and correspondence, including questions or problems arising from this ITB, to the Solicitation Coordinator:

State of Tennessee
Department of General Services, Central Procurement Office
3rd Floor, William R. Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Attn: Joyanna Brassfield
(615) 741-1251
Joyanna.West@tn.gov

A.2. Schedule of Events

Event	Time (Central Time Zone)	Date
1. RFI Issued		June 3, 2015
2. Pre-Response Conference	See Terms & Conditions Section A.1	June 16, 2015
3. Respondent's Written "Questions & Comments" Deadline	2:00 PM	June 18, 2015
4. RFx/Event Posting		July 10, 2015
5. Response Deadline	2:00 PM	July 23, 2015
6. State Opening & Scoring of Responses		July 23, 2015
7. State Notice of Intent to Award Released		August 11, 2015
8. Contract Award		September 1, 2015

The State reserves the right, at its sole discretion, to adjust the Schedule of Events as it deems necessary.

A.3. General Solicitation Requirements

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

b. Response Mailing Instructions: Each individual Response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the Response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

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

c. A Response must be received in the Central Procurement Office on or before the date and hour designated for the Response opening or the Response will be rejected. A Response must respond, as required, to this ITB (including its attachments). The State of Tennessee ("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. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

d. If submitting the Response by mail: All prices must be typed or written in ink on the Line Details portion of the Invitation to Bid; any corrections, erasures or other forms of alteration to unit prices must be initialed by the Respondent.

e. If submitting the Response by mail, the Response must be manually signed in ink; failure to do so will cause rejection of your Response. If submitting the Response on-line, your electronic signature constitutes having signed the Response.

f. It is understood and agreed that this Response, when certified by authorized signature, shall constitute an offer, which when accepted in writing by the Department of General Services, Central Procurement Office, and subject to the terms and conditions of such acceptance, will constitute a valid binding contract between the State of Tennessee and the Respondent.

g. The Respondent understands that by signing this Response, the signed Response constitutes a firm offer, which is irrevocable by the Respondent. The State may accept the Respondent's offer in any manner for a period of 90 (ninety) days. Acceptance by the State will result in a valid binding contract between the State and Respondent, subject to the terms and conditions of the State's acceptance.

h. Respondent proposes to furnish and deliver all of the goods or services identified in the ITB at the prices contained in the Response.

i. Response prices shall include delivery of all items F.O.B. destination or as otherwise specified.

j. Pursuant to Tenn. Code Ann. § 4-56-105, all Respondents must register with the State prior to the award of a contract or issuance of a purchase order. Respondents can register online at the State of Tennessee Supplier Portal: https://supplier.edison.tn.gov.

k. Response Rejection: The Central Procurement Office reserves the right to reject any Response that contains prices for individual goods or services that are inconsistent or unrealistic when compared to other prices in the same or other Responses, if such action would be in the best interest of the State.

Errors: Each correction made by the Respondent on the Response must be initialed in ink by each correction. No corrections will be made in pencil. No Response or line item shall be altered or amended after the Response opening. In the case of errors in the extension price, the unit price will govern. Failure to comply with the above may be cause for rejection of part or the entire Response.

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

m. The Central Procurement Office may reject any or all responses. Action to reject all responses shall be taken for unreasonably high prices, errors in the ITB, cessation of need, unavailability of funds, or any other reason approved by the Procurement Commission. The Procurement Commission has authorized rejection of all responses for failure to secure adequate competition. If an ITB is to be re-advertised, all prior responses shall remain closed to inspection until the evaluation of the re-advertisement is complete.

n. All Respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested Respondents should contact the Solicitation Coordinator once the file is open for the seven (7) calendar day inspection period. A notice of intent to award letter will be sent to all Respondents; the letter will identify the Respondent(s) recommended for award and the evaluated award amount(s). If requested, Respondents will have a reasonable opportunity to inspect the procurement file. If there is no request to inspect the procurement file by the end of the inspection period, the Solicitation Coordinator will proceed with the award.

o. Protest by Respondent: Under Tenn. Code Ann. §12-3-514, any actual Respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the Solicitation Coordinator. The website for the Central Procurement Office is as follows: http://www.tn.gov/generalservices/topic/vendor-information

p. 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 Response from the employee and shall not constitute a prohibited conflict of interest.

q. Exceptions to terms and conditions or new terms and conditions proposed by the Respondent which may vary from the ITB may render the Response nonresponsive.

r. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and back orders will only be accepted with receiving agency's prior authorization.

s. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production, and formally announced by the manufacturer as being commercially available as of the date of the Response opening, unless otherwise stated in this ITB.

Manufacturers of chemical products which are the subject of purchase contracts for the State of Tennessee shall list and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDS search repository or on the manufacturer's website so that such information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public. In lieu of posting a MSDS on MSDSSEARCH, a respondent shall include the manufacturer's universal resource locator (URL) for its MSDS in the event. For purposes of this MSDS requirement, the Department of General Services recognizes the following URL for national MSDS search repository: MSDS-SEARCH, which can be accessed on the internet at: http://www.msdssearch.com.

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

(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;
(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) 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.

u. Response Offer Expiration: Enter the expiration date of your Response offer in the space provided on this Invitation to Bid. A minimum period of thirty (30) days from the Response closing date is requested. The state shall have sixty (60) days to accept the Response if a minimum period is not stated.

v. Respondent's Qualification: Respondents must, upon request of the state, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions and specifications. The Central Procurement Officer, Department of General Services, Central Procurement Office, reserves the right to make the final determination as to a Respondent's ability to perform.

w. Multiple Award Contracts: An individual contract shall be awarded to the lowest three responsive and responsible Respondents within each County and Job Group:

Job Group 1: Electrical
Job Group 2: HVAC
Job Group 3: Plumbing

The lowest Response of these three (3) within each County shall be the primary vendor ("Vendor A"). Vendor A shall have full responsibility for all initial Contract requirements. The other two Respondents shall be secondary and tertiary vendors with the next lowest Response awarded to vendor ("Vendor B") and the third lowest awarded vendor ("Vendor C"). Refer to Specifications Section D Job Performance Requirements for further detail on the usage of the Contractors within these different tiered vendor classifications.

x. Award Criteria: An award shall be made to the lowest responsive and responsible Respondent considering the following:

Ability to Perform
Conformity to Specifications
Lowest Composite Score

y. On-Site Inspection: All Respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances which might exist. No allowances will be made by the State for errors in quotations due to any Respondent not visiting the site prior to submitting their Response. Respondents shall be responsible for their own measurements.

z. IMPORTANT: By submitting the Response, the Respondent certifies compliance with the above and further certifies that this Response is made without collusion or fraud.

B. Contract Terms and Conditions

B.1. Scope of Contract

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

B.2. Contract Period

a. Term of Contract. This Contract shall be effective on September 1, 2015 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

b. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to four (4) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option.

c. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

B.3. Mandatory Terms and Conditions

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

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

   If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services.

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

c. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases ("Estimated Liability") during the Term shall be:

Electrical = $2,176,667
HVAC = $3,361,731
Plumbing = $1,714,160

This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

d. Compensation Firm. The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

State Agency Billing Address

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

i. Invoice number (assigned by the Contractor);
ii. Invoice date;
iii. Contract number (assigned by the State);
iv. Purchase order number (assigned by the State);
v. Customer account name;
vi. Customer account number (assigned by the Contractor to the above-referenced Customer);
vii. Contractor name;
viii. Contractor Tennessee Edison Vendor ID number;
ix. Contractor contact for invoice questions (name, phone, or email);
x. Contractor remittance address;
xi. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
xii. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
xiii. Applicable payment methodology of each good or service invoiced;
xiv. Amount due for each compensable unit of good or service; and
xv. Total amount due for the invoice period.

(2) Contractor's invoices shall:

i. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
ii. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
iii. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
iv. Include shipping or delivery charges only as authorized in this Contract.

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

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

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

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

j. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

(1) The Contractor shall complete, sign, and present to the State:

i. an "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
ii. an "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card.

(2) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

k. Price Changes. Prices identified in the Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source, shall remain firm for three hundred and sixty-five (365) days ("Firm Price Period").

(1) Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

(2) Price Increases. Contractor may request price increases that will be effective after the Firm Price Period. The request shall: include independently verifiable documentation that supports Contractor's request for a price increase; not constitute an increase in Contractor profit; and reflect a price increase that is applicable to all of Contractor's customers. All price increase requests must be received by the CPO no less than ninety (90) days in advance of the contract renewal period.

(3) Approval of Price Changes. The State may at its sole option:

i. grant the Contractor's request;
ii. cancel the Contract and award it to the next apparent best evaluated Respondent;
iii. cancel the Contract and reissue the solicitation; or
iv. deny the Contractor's request.

The State reserves the right to verify Contractor's price change requests and enter into negotiations.

Any price changes equal to or less than three and a half percent (3.5%) will become effective upon the State's approval in writing. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

If approved, any price change would take effect after the Firm Price Period.

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

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

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

The State:

Department of General Services, Central Procurement Office
3rd Floor, William R. Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243
(615) 741-1035

The Contractor:

Refer to related Edison contracts for Contractor information.

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

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

p. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

q. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

r. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

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

t. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract. The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

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

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

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

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

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

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

(5) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not:

i. a United States citizen;
ii. a Lawful Permanent Resident;
iii. a person whose physical presence in the United States is authorized;
iv. allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or
v. is otherwise authorized to provide services under the Contract.

w. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

x. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

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

z. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

aa. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

bb. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in this Contract and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct, or omissions that result in personal injuries or death.

cc. Statewide Contract Reports. All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

(1) Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than ten (10) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October – December is due no later than January 10th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities, quasi-governmental bodies ("Other Governmental Bodies"), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

i. Edison contract number
ii. Contract line item number
iii. Invoice date
iv. Invoice number
v. Vendor part number
vi. Item or bundle description
vii. Quantity purchased
viii. Unit of measure
ix. Unit of measure description
x. Name of State Agency, Other Governmental Body or not-for-profit entity
xi. Identity of purchaser: State entity or non-State entity
xii. State Agency location
xiii. Unit/Contract price per line item
xiv. List price as listed in Contractor's catalog if catalog item.
xv. Sub-totals for each category above
xvi. Grand totals for each category above

(2) Diversity Business and Subcontractor Usage Reports: When requested by the State, the Contractor shall submit reports of returns, credits, savings, net purchases, and percent of net purchases by subcontractors, small business enterprises, and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be submitted to the Contract Administrator.

(3) Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

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

(1) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

(2) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

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

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

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

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

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

(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;

(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 offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

(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 b. of this certification; and

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

hh. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any

delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

ii. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

jj. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. § 9-8-101 – 407.

kk. Entire Agreement. This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.

ll. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

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

nn. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

(1) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
(2) this Contract with any attachments or exhibits (excluding the items listed at subsections (3) through (6), below);
(3) any clarifications of or addenda to the Respondent's Response seeking this Contract;
(4) the ITB, as may be amended, requesting Responses in competition for this Contract;
(5) any technical specifications provided to respondents during the procurement process to award this Contract; and,
(6) the Respondent's Response seeking this Contract.

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

B.4. Special Terms and Conditions

a. Cleanup. The Contractor is responsible for the removal of all debris and shall leave the work area in a "broom clean" condition, less wear and tear excepted. In the event Contractor fails to

return the work area to a broom clean condition after completion of work, the State reserves the right to assess the Contractor reasonable costs for cleanup and disposal.

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

c. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned on the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

d. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. § 12-7-101, et. seq., shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

e. Proof of Cost for Parts, Materials, Supplies, and Equipment. Contractor shall invoice all parts, materials, supplies, and equipment at Contractor's out-of-pocket cost ("Cost") plus fifteen percent (15%) and minus any applicable sales or use tax as provided in Tenn. Code Ann. § 67-6-329. If Contractor receives any discounts when purchasing parts, materials, supplies, or equipment, the State shall receive the benefit of the discounts when Contractor determines its Cost. With each invoice submitted to the State, Contractor shall include documentation of the Cost of parts, materials, supplies, and equipment. If Contractor fails to provide sufficient documentation of its purchase Cost, the State may verify current market value, and if necessary, adjust Contractor's invoice to reflect fair market price.

f. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. § 12-4-401 – 12-4-415.

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

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

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

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

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

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars ($50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

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

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

(1) The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits:

i. Commercial General Liability Insurance

1. The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2. The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate for bodily injury and property damage, including

products and completed operations coverage with an aggregate limit of at least two million dollars ($2,000,000).

ii. Workers' Compensation and Employer Liability Insurance

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

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

3. In an amount not less than one million dollars ($1,000,000) including employer liability of one million dollars ($1,000,000) per accident for bodily injury by accident, one million dollars ($1,000,000) policy limit by disease, and one million dollars ($1,000,000) per employee for bodily injury by disease.

4. If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. § 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

(a) The Contractor employees fewer than five (5) employees;
(b) The Contractor is a sole proprietor;
(c) The Contractor is in the construction business or trades with no employees;
(d) The Contractor is in the coal mining industry with no employees;
(e) The Contractor is a state or local government; or
(f) The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

iii. Automobile Liability Insurance

1. The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

2. The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars ($1,000,000) per occurrence or combined single limit.

h. Performance Bond. The Contractor(s) will be required to furnish a Performance Bond in the amount of one hundred percent (100%) of the Contract price on all projects in excess of twenty-five thousand dollars ($25,000.00). Such bond shall be issued from a surety company licensed to do business in the State of Tennessee and shall be furnished to the Central Procurement Office within ten (10) working days after the request. The Performance Bond will guarantee the Contractor's full and faithful performance of all undertakings and obligations under the Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents.

i. Payment Bond. Pursuant to Tenn. Code Ann. § 12-4-201, the successful Contractor(s) will be required to furnish a Payment Bond in the amount of twenty-five percent (25%) of the Contract price on all jobs in excess of one hundred thousand dollars ($100,000.00). Such Bond shall be issued from a surety company licensed to do business in the State of Tennessee and shall be furnished to the Central Procurement Office within ten (10) working days after the request. The Payment Bond will insure that the Contractor will pay for all the labor and materials used by the Contractor, or any immediate or remote Subcontractor under the Contractor, in such Contract, in lawful money of the United States. Note: a Payment Bond shall be required for all projects that exceed $100,000.00.

j. Subcontracting: Responsibilities and Liabilities. The Contractor shall not enter into any subcontract for services without the written consent of the Central Procurement Office. The awarded Contractor is responsible for work, service, performance, contractual liability workers' compensation injuries of employees and subs (unless subcontractor assumes responsibility and furnishes an original certificate of insurance as proof of insurance for workers' compensation and naming the State of Tennessee as additionally insured for general liability), and payment to the subcontractor. All costs incurred for subcontracting must be included in the job price. The successful Contractor(s) will be required, for projects in excess of one hundred thousand dollars ($100,000.00), to furnish a labor and material payment bond issued by a surety company licensed to do business in the State of Tennessee in the amount of twenty-five (25) % of the total contract amount. Such bond shall be furnished to the Central Procurement Office within ten (10) working days after the request. The payment bond will insure that the Contractor will pay for all labor and materials used by the Contractor, or any immediate or remote subcontractor under the Contractor, in such Contract, in lawful money of the United States.