



AUSTIN PEAY STATE UNIVERSITY

Request for Proposal

ATHLETIC WEBSITE

APSU RFP #: 12-046

Proposal Due January 20, 2012
Date/Time: 4:00 PM (CST)

Electronic copies of this Request for Proposal available by contacting appurchasing@apsu.edu.

**PROPOSAL COVER AND CERTIFICATION FORM
SUBMITTED IN RESPONSE TO THE REQUEST FOR PROPOSAL:**

**Purchasing
Austin Peay State University
505 York Street
P.O. Box 4638
Clarksville, TN 37040**

RFP Number: 12-046

**Technical and Cost Proposals Due
OPENING DATE: January 20, 2012
CENTRAL TIME: 4:00 PM (CST)**

APSU Bid Site: www.apsu.edu/purchasing

I certify that this proposal is made without prior understanding, agreement, or connection with any persons, firm or corporation submitting a proposal for this RFP and is in all aspects fair and without collusion or fraud. I certify that I am authorized to sign this proposal for the Vendor.

I further certify that the submission of this proposal shall be deemed acceptance of all the terms and conditions of this RFP, except as may be specifically provided otherwise in the proposal.

Date: _____

Federal Identification Number: _____

Name of Proposer: _____

Mailing Address: _____

City, State: _____ Zip Code: _____

Telephone: _____

Fax: _____

E-mail: _____

By: Authorized Signature (Signed) _____

Title: _____

Authorized Signature (Typed) _____

Failure to sign this Proposal Form will result in the disqualification of your entire RFP Proposal.

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1 INTRODUCTION

1.1 Background

The Tennessee Board of Regents (TBR) is the sixth largest system of public higher education in the nation, with 45 campuses, over 185,000 students, and 15,000 full-time employees. The system consists of six universities – one of which has a law school and one of which has a medical school, 13 community colleges, 26 technical centers, and the system office. Institutions are located in 90 of the 95 counties in Tennessee, and offer a large variety of degrees and services.

Institutions vary in complexity and size from a research intensive university with approximately 20,000 students, to a comprehensive university with over 23,000 students, to 4 regional universities (one that includes a medical school), to 13 community colleges, ranging in size from over 11,000 students to less than 3,000 students. The TBR system also includes 26 Tennessee Technology Centers which offer a wide variety of technical and vocational certificate programs.

1.2 Statement of Purpose

Austin Peay State University hereinafter Institution, has issued this Request for Proposal (RFP) to define the Institution's minimum service requirements; solicit proposals; detail proposal requirements; and, outline the Institution's process for evaluating proposals and selecting the contractor.

Through this RFP, Institution seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are small, minority, or women-owned an opportunity to do business with the Institution as contractors and subcontractors. Vendors must complete the Minority/Ethnicity form (See Attachment 6.1 for form and classification definitions)

The Institution intends to secure a contract for services in connection with the provision of an "Official Athletics Website" for the athletics department.

1.3 Scope of Service, Contract Period, and Required Terms and Conditions

The RFP Attachment 6.2, *Pro Forma* Contract details the Institution's required:

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

The *Pro Forma* Contract substantially represents the contract document that the Proposer selected by the Institution MUST agree to and sign. Proposers should review all sections of the Pro Forma Contract (including legal terms and conditions) and submit any questions regarding the Pro Forma Contract with the written questions to be submitted by the deadline identified in RFP Section 2, Schedule of Events. Sections not addressed shall be deemed to be acceptable by Proposer. The Institution reserves the right to modify the terms of the Pro Forma Contract during the contract negotiation phase; however, such modifications shall not be such that the apparent successful Proposer no longer offers the best proposal.

1.4 Coverage and Participation

It is acknowledged that Austin Peay State University is issuing this proposal on behalf of all TBR Members Institutions and the University of Tennessee System (UT) of Higher Education that may desire to utilize services or purchase under a resulting Agreement. A listing of these institutions is provided in Attachment 6.9. Does Proposer agree to extend this proposal and current contract pricing to all TBR/UT Institutions of Higher Education? ____yes ____no.

(This does not mean that other TBR or UT institutions are required to utilize services under the RFP. Such use of contract would require a separate contract between the Institution and the Contractor referencing the terms and conditions as established in the Agreement.

1.5 Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the Institution's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, veteran

status, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the Institution or in the employment practices of the Institution's contractors. Accordingly, all vendors entering into contracts with the Institution shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

The Institution has designated the following 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 applicable federal regulations.

Michael Hamlet
 Director, Human Resources
 Austin Peay State University
 Human Resources, P.O. Box 4507
 Clarksville, TN 37044
 931-221-7179

1.6 Assistance to Proposers with a Disability

A Proposer with a disability may receive accommodation regarding the means of communicating this RFP and participating in this RFP process. A Proposer with a disability should contact the RFP Coordinator to request reasonable accommodation no later than the Disability Accommodation Request Deadline in the RFP Section 2, Schedule of Events.

1.7 RFP Communications

1.7.1 Unauthorized contact regarding this RFP with employees or officials of the Institution other than the RFP Coordinator named below may result in disqualification from this procurement process.

1.7.1.1 Interested Parties must direct all communications regarding this RFP to the following who is the Institutions only official point of contact for this RFP.

Judy Blain
 Austin Peay State University
 505 York Street
 (931) 221-7691
 (931) 221-6300
 Blainj@apsu.edu

1.7.2 The Institution has assigned the following RFP identification number that must be referenced in all communications regarding the RFP:

RFP – 12-046

1.7.3 Only the University's official, written responses and communications shall be considered binding with regard to this RFP. Any oral communications shall be considered unofficial and non-binding with regard to this RFP.

1.7.4 Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the Institution. The Institution assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic "postmarking" of a communication or proposal to the Institution by a deadline date shall not substitute for actual receipt of a communication or proposal by the Institution.

1.7.5 Unless otherwise specified herein, the University will convey all official responses and communications pursuant to this RFP by posting them on its website at www.apsu.edu/purchasing under the link for "Bid Listings." It is the responsibility of each bidder to monitor this site in order to obtain any new and/or additional information that may be distributed relative to this RFP. Proposals must address all additional correspondence as needed.

- 1.7.6 The RFP Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline in the RFP Section 2, Schedule of Events.
- 1.7.7 The Institution reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. The Institution's official responses and other official communications pursuant to this RFP shall constitute an amendment of this RFP.
- 1.7.8 Only the Institution's official, written responses and communications shall be considered binding with regard to this RFP.
- 1.7.9 Any data or factual information provided by the Institution, in this RFP or an official response or communication, shall be deemed for informational purposes only, and if a Proposer relies on such data or factual information, the Proposer should either: (1) independently verify the information; or, (2) obtain the Institution's written consent to rely thereon.

1.8 Proposal Deadline

Proposals must be submitted no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. A proposal must respond to the written RFP and any RFP exhibits, attachments, or amendments. A late proposal shall not be accepted, and a Proposer's failure to submit a proposal before the deadline shall cause the proposal to be disqualified.

1.9 Written Questions/Answer Period

A question and answer period deadline is in the RFP Section 2, Schedule of Events. The purpose of the written question/answer period is to allow Proposers to submit any questions they may have in regard to the scope of services requested. To ensure accurate, consistent responses to all known potential Proposers, the official response to questions will be issued by the Institution as described in RFP Sections 1.7, *et seq.*, above and on the date in the RFP Section 2, Schedule of Events.

2 RFP SCHEDULE OF EVENTS

The following Schedule of Events represents the Institution's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., (CST).

RFP SCHEDULE OF EVENTS		
NOTICE: The Institution reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The Institution will communicate any adjustment to the Schedule of Events to the potential Proposers		
EVENT	TIME	DATE (all dates are Institution business days)
1. Institution Issues RFP		December 20, 2011
2. Disability Accommodation Request Deadline		January 3, 2011
3. Written Question/Comments Deadline		January 3, 2012
4. Institution Responds to Written Question/Comments		January 10, 2012
5. Proposal Deadline		January 20, 2012
6. Institution Completes Technical Proposal Evaluations		January 31, 2012
7. Presentations (location to be announced)		February 6 – 10, 2012
8. Institution Opens Cost Proposals and Calculates Scores		February 14, 2012
9. Institution Issues Intent to Award Letter <u>and</u> Opens RFP Files for Public Inspection		February 22, 2012
10. Award of Contract		March 1, 2012
11. Contract Effective Date		April 1, 2012

3 PROPOSAL REQUIREMENTS

Each Proposer must submit a proposal in response to this RFP with the most favorable terms that the Proposer can offer. There will be no best and final offer procedure. However, Institution reserves the right to further clarify or negotiate with the best evaluated Proposer subsequent to award recommendation but prior to contract execution if deemed necessary by Institution. Institution may initiate negotiations which serve to alter the bid/proposal in a way favorable to the Institution. For example, prices may be reduced, time requirements may be revised, etc. In no event shall negotiations increase the cost or amend the proposal such that the apparent successful Proposer no longer offers the best proposal.

3.1 Proposal Form and Delivery

3.1.1 Each response to this RFP must consist of a Technical Proposal and a Cost Proposal (as described below).

3.1.2 Each Proposer must submit one (1) original, one (1) electronic, and four (4) copies of the Technical Proposal to the Institution in a sealed package that is clearly marked:

“Technical Proposal in Response to RFP- 12-046 -- Do Not Open”

3.1.3 Each Proposer must submit one (1) original, one (1) electronic, and four (4) copies of the Cost Proposal to the Institution in a separate, sealed package that is clearly marked:

“Cost Proposal in Response to RFP- 12-046 -- Do Not Open”

3.1.4 If a Proposer encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Proposer must clearly mark the outermost package:

“Contains Separately Sealed Technical and Cost Proposals for RFP- 12-046”

3.1.5 The Institution must receive all proposals in response to this RFP, at the following address, no later than the Proposal Deadline time and date in the RFP Section 2, Schedule of Events. Late proposals will not be considered and will remain unopened and filed in the RFP file.

681 Summer Street, Clarksville, Tennessee 37040.

3.1.6 A proposal must be typewritten or hand-written in ink. A Proposer may not deliver a proposal orally or solely by means of electronic transmission.

3.2 Technical Proposal

3.2.1 The RFP Attachment 6.5, Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this RFP. This guide includes mandatory and general requirements as well as technical queries requiring a written response.

NOTICE: No pricing information shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts in the Technical Proposal will make the proposal non-responsive, and the Institution shall reject it.

3.2.2 Each Proposer must use the Technical Proposal and Evaluation Guide to organize, reference, and draft the Technical Proposal. Each Proposer should duplicate the Technical Proposal and Evaluation Guide and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).

3.2.3 Each proposal should be economically prepared, with emphasis on completeness and clarity of content. A proposal, as well as any reference material presented, must be written in English and must be written on standard 8 1/2" x 11" paper (although foldouts containing charts, spreadsheets, and oversize exhibits are permissible). All proposal pages must be numbered.

3.2.4 All information included in a Technical Proposal should be relevant to a specific requirement detailed in the Technical Proposal and 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 in no way contribute to the evaluation process.

- 3.2.5 The Institution may determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference sections of the Technical Proposal as required by this RFP and the Technical Proposal and Evaluation Guide;
- 3.2.6 The Institution may determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in the Technical Proposal and Evaluation Guide
- 3.2.7 The Proposer must sign and date the Technical Proposal. Digital, electronic, or facsimile signatures will not be acceptable as the original signature. Failure to submit one (1) original with an original signature will be cause for rejection of the proposal.

3.3 Proposer Presentations

- 3.3.1 Determination of Finalists. Proposers submitting proposals that meet the mandatory requirements and who receive the highest pre-presentation technical proposal scores by the evaluation team will be designated as Finalists. Only Finalists will be invited to enter the presentation phase of the evaluation process. In order to be considered for an award, Finalists must deliver a presentation as described in this Section. The only Revenue Proposals that will be opened and scored will be those for Finalists who deliver a presentation.
- 3.3.2 Finalists Presentations. Each invited finalists will be allowed one (1) hour of demonstration time plus 30 minutes for questions and answers. Presentations will be scheduled by the RFP Coordinator. Finalists must stay within the scheduled presentation time.
- 3.3.3 Presentation Equipment. Finalists are responsible for providing all hardware and software necessary to deliver the presentation. Finalists must provide a list of any other requirements needed for presentations in its Proposal.
- 3.3.4 Presentation Content. The presentations must not include financial information. The University reserves the right to reject any proposer's bid and presentation that does not conform to with the requirements located in this section.
- 3.3.5 Presentation Materials. At the time of the presentations, Finalists must provide sufficient printed materials for at least six (6) individuals.
- 3.3.6 Presentation Evaluation. Each presentation will be evaluated against the following criteria:
 - Commitment to Customer Service
 - Understanding of University needs
 - Meets RFP Requirements

3.4 Cost Proposal

- 3.4.1 The Cost Proposal must be submitted to the Institution in a sealed package separate from the Technical proposal.
- 3.4.2 Each Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.6, Cost Proposal and Scoring Guide.
- 3.4.3 Each Proposer shall ONLY record the proposed cost exactly as required by the Cost Proposal and Evaluation Guide and shall NOT record any other rates, amounts, or information.
- 3.4.4 The proposed cost shall incorporate all costs for services under the Contract for the total contract period.
- 3.4.5 The Proposer must sign and date the original Cost Proposal. Digital, electronic, or facsimile signatures will not be acceptable as the original signature. Failure to submit originals with an original signature shall be cause for rejection of the proposal.
- 3.4.6 If a Proposer fails to submit a Cost Proposal as required, the Institution shall determine the proposal to be non-responsive and reject it.

4 GENERAL REQUIREMENTS & CONTRACTING INFORMATION

4.1 Proposer Required Review and Waiver of Objections

Each Proposer must carefully review this RFP and all attachments, including but not limited to the *Pro Forma* Contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP objections must be made in writing and received by the Institution no later than the Written Comments Deadline in the RFP Section 2, Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made.

Protests based on any objection shall be considered waived and invalid if these comments/objections have not been brought to the attention of the Institution, in writing, by the Written Comments Deadline.

4.2 RFP Amendment and Cancellation

The Institution reserves the unilateral right to amend this RFP in writing at any time. If an RFP amendment is issued, the Institution will convey such amendment to the potential Proposers who were mailed the RFP. Each proposal must respond to the final written RFP and any exhibits, attachments, and amendments.

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

4.3 Proposal Prohibitions and Right of Rejection

- 4.3.1 The Institution reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.
- 4.3.2 Each proposal must comply with all of the terms of this RFP and all applicable state laws and regulations. The Institution may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP. The Institution may consider any proposal that does not meet the requirements of this RFP to be non-responsive, and the Institution may reject such a proposal.
- 4.3.3 A proposal of alternate services (*i.e.*, a proposal that offers services different from those requested by this RFP) shall be considered non-responsive and rejected.
- 4.3.4 A Proposer may not restrict the rights of the Institution or otherwise qualify a proposal. The Institution may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected. A link to the impermissible clauses or copies of impermissible provisions is available from RFP Coordinator upon request.
- 4.3.5 A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the Institution may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.
- 4.3.6 A Proposer shall not submit more than one proposal. Submitting more than one proposal shall result in the disqualification of the Proposer unless specifically provided for in this proposal.
- 4.3.7 A Proposer shall not submit multiple proposals in different forms. This prohibited action shall be defined as a Proposer submitting one proposal as a prime contractor and permitting a second Proposer to submit another proposal with the first Proposer offered as a subcontractor. This restriction does not prohibit different Proposers from offering the same subcontractor as a part of their proposals, provided that the subcontractor does not also submit a proposal as a prime contractor. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.
- 4.3.8 The Institution shall reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Proposer. Regardless of the time of detection, the Institution shall consider

any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.

4.3.9 The Institution shall not contract with or consider a proposal from:

- 4.3.9.1 an individual who is, or within the past six months has been, a state employee. An individual shall be deemed a state employee until such time as all compensation and terminal leave has been paid. Contracts with a company or corporation in which a controlling interest is held by any state employee or the employee's spouse shall be considered, for the purpose of applying this rule, to be a contract with the individual.
- 4.3.9.2 a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this shall not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
- 4.3.9.3 a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
- 4.3.9.4 any individual, company, or other entity involved in assisting the Institution in the development, formulation, or drafting of this RFP or its scope of services shall be considered to have been given information that would afford an unfair advantage over other Proposers, and such individual, company, or other entity may not submit a proposal in response to this RFP.
- 4.3.10 The Institution reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this RFP. If the Institution waives minor variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with the RFP.

4.4 Incorrect Proposal Information

If the Institution determines that a Proposer has provided, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive and shall be rejected.

4.5 Proposal of Additional Services

If a proposal offers services in addition to those required by and described in this RFP, the additional services may be added to the Contract before contract signing at the sole discretion of the Institution. Costs associated with additional services must be provided on a separate attachment in the cost proposal. Please note that proposed additional services will not be used in evaluating the proposal.

4.6 Assignment and Subcontracting

- 4.6.1 The Proposer awarded a contract pursuant to this RFP may not subcontract, transfer, or assign any portion of the Contract without the Institution's prior, written approval.
- 4.6.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Institution and with the Institution's prior, written approval.
- 4.6.3 At its sole discretion, the Institution reserves the right to refuse approval of any subcontract, transfer, or assignment.
- 4.6.4 Notwithstanding Institution approval of each subcontractor, the Proposer, if awarded a contract pursuant to this RFP, shall be the prime contractor and shall be responsible for all work performed.

4.7 Right to Refuse Personnel

At its sole discretion, the Institution reserves the right to refuse any personnel, of the prime contractor or a subcontractor, for use in the performance of a contract pursuant to this RFP.

4.8 Insurance

Successful Proposer must provide and maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Proposer shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Proposer shall deliver to the Institution a certificate of insurance no later than the effective date of the contract. If any policy providing insurance required by the contract is cancelled prior to the policy expiration date, the Proposer, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the contract or in this document of the kinds and amounts of liability insurance shall not abridge, diminish or affect the contractor's legal responsibilities for the consequences of accidents arising out of or resulting from the services of the successful bidder under this contract.

Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the Institution shall be in form and substance acceptable to the Institution.

4.9 Licensure

The apparent successful Proposer must hold all necessary, applicable business and professional licenses. The Institution may require any or all Proposers to submit evidence of proper licensure with the RFP response. Licensure information must be clearly identified on the outside of Proposer's technical response.

4.10 Financial Stability

The successful Proposer will be required to provide information to TBR to demonstrate financial stability and capability prior to award of contract.

4.11 Proposal Withdrawal

A Proposer may withdraw a submitted proposal at any time up to the Proposal Deadline time and date in the RFP Section 2, Schedule of Events. To do so, a Proposer must submit a written request, signed by a Proposer's authorized representative to withdraw a proposal. After withdrawing a previously submitted proposal, a Proposer may submit another proposal at any time up to the Proposal Deadline.

4.12 Proposal Errors and Amendments

At the option of the Institution, a Proposer may be bound by all proposal errors or omissions. A Proposer will not be allowed to alter or amend proposal documents after the Proposal Deadline time and date in the RFP Section 2, Schedule of Events unless formally requested, in writing, by the Institution.

4.13 Proposal Preparation Costs

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

4.14 Continued Validity of Proposals

All Proposals shall state that the offer contained therein is valid for a minimum of one hundred twenty (120) days from the date of opening. This assures that Proposers' offers are valid for a period of time sufficient for thorough consideration. Proposals which do not so state will be presumed valid for one hundred twenty (120) days.

4.15 Disclosure of Proposal Contents

Each proposal and all materials submitted to the Institution in response to this RFP shall become the property of the Institution. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, shall be held in confidence during the evaluation process.

Upon the completion of the evaluation of proposals, indicated by public release of a Letter of Intent to Award, the proposals and associated materials shall be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7). By submitting a proposal, the Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection.

If an RFP is re-advertised, all prior offers and/or proposals shall remain closed to inspection by the Proposers and/or public until evaluation of the responses to the re-advertisement is complete.

4.16 Contractor Registration

All service contractors must complete a vendor application with Institution and become a registered vendor. The vendor application submitted by the Proposer will be sent to the Governor's Office of Diversity Business Enterprise for official certification. However, registration with the Institution is not required to make a proposal (any unregistered service provider must simply register as required prior to the final contract approval). Refer to the following Internet URL to obtain the Institution's vendor application instructions and forms:

www.apsu.edu/purchasing/vendor_info.htm

4.17 Contract Approval

The RFP and the contractor selection processes do not obligate the Institution and do not create rights, interests, or claims of entitlement by either the Proposer with the apparent best-evaluated proposal or any other Proposer. Contract award and Institution obligations pursuant thereto shall commence only after the contract is signed by the Contractor and all other Institution/State officials as required by state laws and regulations.

4.18 Contract Cancellation

Either party reserves the right to cancel the contract with a one hundred twenty (120) day written notice.

4.19 Contract Term

The Institution intends to enter into a contract with an expected effective period beginning April 1, 2012 and ending June 30, 2012 during which the contractor will produce a website in conjunction with approved University personnel. The first full year of the contract will have a beginning date of July 1, 2012 and ending date of June 30, 2013. The Institution reserves the right to renew the contract on an annual basis for up to four (3) additional one-year terms at its option. The Institution reserves the right to cancel the Contract if sufficient funding for its continuance is not appropriated by the General Assembly of the State of Tennessee. Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months.

4.20 Contract Payments

All contract payments shall be made in accordance with the Contract's Payment Terms and Conditions provisions (refer to RFP Attachment 6.2, *Pro Forma Contract*, Section C). No payment shall be made until the Contract is approved as required by state laws and regulations. Under no circumstances shall the Institution be liable for payment of any type associated with the Contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by Institution officials as required by applicable statutes and rules of the State of Tennessee or before the Contract start date or after the Contract end date specified by the Contract. Payments to the Contractor will be made in accordance with the Tennessee Prompt Pay Act (T.C.A. Section 12-4-701 et seq.).

4.21 Contract Monitoring

The Contractor's deliverables and services provided pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, by a duly appointed representative(s). The Contractor shall submit brief, periodic, progress reports to the Institution as requested.

4.22 Severability

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

4.23 Policy and Guideline Compliance This proposal request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents (www.tbr.edu) and the Institution (available upon request).**4.24 Protest Procedures.****A. Right to Protest**

- (i) Any actual Proposer who claims to be aggrieved in connection with a specific solicitation process may submit a protest in writing to the Director of Purchasing within seven (7) calendar days after he or she knows or should have known the facts giving rise to the protest.

All Proposers should know and shall be deemed responsible for knowing the facts documented in the Institution's procurement files on the day the Institution opens the bid files for public inspection.

Any issues raised by the protesting party after the seven (7) calendar day period shall not be considered as part of the protest.

- (ii) *Signature on Protest Constitutes Certificate.* The signature of an attorney or protesting party on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay, or needless increase in the cost of the procurement or of the litigation. If a request for consideration, protest, pleading, motion, or other document is signed in violation of this subsection before or after appeal to the Chancellor, the Chancellor upon motion or upon his/her own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties, including the affected Institution, the amount of the reasonable expenses incurred because of the filing of the protest, a petition for a stay of award, pleading, motion, or other paper, including reasonable attorneys' fees.

- (iii) Neither a protest nor a stay of award shall proceed under this section unless the protesting party posts a protest bond (See Attachment 6.11). The protesting party shall post, with the Director of Purchasing of the Institution, at the time of filing a notice of protest, a bond payable to the Institution in the amount of five percent (5%) of the lowest cost proposal evaluated or five percent (5%) of the highest revenue proposal evaluated. Such protest bond shall be in form and substance acceptable to the Institution and shall be immediately payable to the Institution conditioned upon a decision by the Chancellor that:

1. A request for consideration, protest, pleading, motion, or other document is signed, before or after appeal to the Chancellor, in violation of subsection A.(ii);
 2. The protest has been brought or pursued in bad faith; or
 3. The protest does not state on its face a valid basis for protest.
- (iv) The Institution shall hold such protest bond for at least eleven (11) calendar days after the date of the final determination by the Institution. If the protesting party appeals the determination in accordance with subdivision B.(vii), the Institution shall hold such protest bond until instructed by the Chancellor to either keep the bond or return it to the protesting party.
- (v) At the time of filing notice of a protest of a procurement in which the lowest evaluated cost proposal is less than one million dollars (\$1,000,000), or in which the highest evaluated revenue proposal is less than one hundred thousand dollars (\$100,000), a minority or small business protesting party may submit a written petition to the Director of Purchasing for exemption from the protest bond requirement of subsection A.(iii). Such a petition must include clear evidence of minority or small business status. On the day of receipt, the petition shall be given (may be faxed) to the Chancellor or designee. The Chancellor has five (5) business days in which to make a determination. If an exemption from the protest bond requirement is granted, the protest shall proceed as though the bond were posted. Should the Chancellor deny an exemption from the requirement, the protesting party shall post the bond with the Director of Purchasing of the Institution as required in subsection A.(iii) within three (3) business days of the determination. For the purposes of this section, "minority business" is defined as solely owned or at least fifty-one percent (51%) owned by a person or persons who control the daily operation of such business and who is disabled (a person having a physical or mental impairment that in the written opinion of the person's licensed physician, substantially limits one (1) or more of the major life activities of such person, including caring for oneself, and performing manual tasks, which include writing, walking, seeing, hearing, speaking, and breathing); African American (persons having origins in any of the Black racial groups of Africa); Asian American (persons having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the subcontinent, or the Pacific Islands); Hispanic American (persons of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish or Portuguese origin, culture, or descent, regardless of race.); or Native American (persons having origins in any of the original peoples of North America). For purposes of this section, "small business" is defined as one which is independently owned and operated, has total gross receipts of no more than two million dollars (\$2,000,000) for the most recently ended federal tax year, and employs no more than thirty (30) persons on a full-time basis.

B. Authority to Resolve Protest

- (i) The Director of Purchasing of the Institution has the authority to resolve the protest. If deemed necessary, the Director of Purchasing may request a meeting with the protesting party to seek clarification of the protest issues.
- (ii) The final determination of the Director of Purchasing shall be given in writing and submitted to the protesting party.
- (iii) The protesting party may request that the final determination of the Director of Purchasing be considered by the Vice President for Finance and Administration of the Institution. The request for consideration shall be made in writing to the Chief

Business Officer within seven (7) calendar days from the date of the final determination by the Director of Purchasing.

- (iv) The Vice President for Finance and Administration has the authority to review and resolve the protest. If deemed necessary, the Chief Business Officer may request a meeting with the protesting party to seek clarification of the protest issues. The final determination of the Vice President for Finance and Administration shall be given in writing and submitted to the protesting party.
- (v) The protesting party may request that the final determination of the Vice President for Finance and Administration be considered by the President of the Institution. The request for consideration shall be made in writing to the President within seven (7) calendar days from the date of the final determination by the Vice President for Finance and Administration.
- (vi) The Institution shall have no longer than sixty (60) calendar days from receipt of the protest to resolve the protest.
- (vii) The protesting party may request that the final determination of the President be considered by the Chancellor. The request for consideration shall be made in writing to the Chancellor within seven (7) calendar days from the date of the final determination by the President. The determination of the Chancellor or designee is final and shall be given in writing and submitted to the protestor.
- (viii) In the event that the Institution fails to acknowledge receipt of a protest within fifteen (15) days of receipt of a protest or fails to resolve the protest within sixty (60) calendar days, the protesting party may request that the Chancellor consider the protest at a meeting.

C. Stay of Award

Prior to the award of a contract, a Proposer who has protested may submit to the Vice President for Finance and Administration a written petition for stay of award. Such stay shall become effective upon receipt by the Vice President for Finance and Administration. The Director of Purchasing shall not proceed further with the solicitation process or the award of the contract until the protest has been resolved in accordance with this section, unless the Chancellor makes a written determination that continuation of the solicitation process or the award of the contract without delay is necessary to protect substantial interests of the Institution. It shall be the responsibility of the Vice President for Finance and Administration to seek such determination by the Chancellor.

D. Protest Subsequent to Award

The Tennessee Claims Commission has exclusive jurisdiction to determine all monetary claims against the state for the negligent deprivation of statutory rights.

E. Protest Bond

A protest bond may be presented to the Institution in form and substance compliant with the Protest Bond format, Attachment 6.11. Any protest bond presented to the Institution that represents a deviation from the attached format shall be considered for acceptability by the Institution on a case by case basis.

5 PROPOSAL EVALUATION & CONTRACT AWARD

5.1 Evaluation Categories and Maximum Points

The Institution will consider qualifications and experience, technical approach, and cost in the evaluation of proposals. The maximum points that shall be awarded for each of these categories are detailed below.

CATEGORY	MAXIMUM POINTS POSSIBLE
Qualifications and Experience	200
Technical Approach	300
Presentation	300
Cost Proposal	400

5.2 Evaluation Process

The proposal evaluation process is designed to award the Contract not necessarily to the Proposer of least cost, but rather to the Proposer with the best combination of attributes based upon the evaluation criteria.

- 5.2.1 The RFP Coordinator will use the RFP Attachment 6.5, Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation and maintain evaluation records.
 - 5.2.1.1 The RFP Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to RFP Attachment 6.5, Technical Proposal and Evaluation Guide, Technical Proposal Section A). If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether: (1) the proposal meets requirements for further evaluation; (2) the Institution will request clarifications or corrections; or, (3) the Institution will determine the proposal non-responsive to the RFP and reject it.
 - 5.2.1.2 A Proposal Evaluation Team, appropriate to the scope and nature of the RFP, will evaluate each Technical Proposal that appears responsive to the RFP.
 - 5.2.1.3 Each Proposal Evaluation Team member will independently, evaluate each proposal against the evaluation criteria in this RFP, rather than against other proposals, and will score each in accordance with the RFP Attachment 6.5, Technical Proposal and Evaluation Guide.
 - 5.2.1.4 The Institution reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the Institution. The subject Proposer shall put any resulting clarification in writing as may be required by the Institution.
- 5.2.2 After Technical Proposal evaluations are completed, the RFP Coordinator will open the Cost Proposals and use the RFP Attachment 6.6, Cost Proposal and Scoring Guide to calculate and document the Cost Proposal scores.
- 5.2.3 For each responsive proposal, the RFP Coordinator will add the Technical Proposal score to the Cost Proposal score (refer to RFP Attachment 6.7, Proposal Score Summary Matrix).

5.3 Contract Award Process

- 5.3.1 The RFP Coordinator will forward the results of the proposal evaluation process to the appropriate institution official who will consider the proposal evaluation process results and all pertinent information available to make a determination about the contract award. The Institution reserves the right to make an award without further discussion of any proposal.

Notwithstanding the foregoing, to effect a contract award to a Proposer other than the one receiving the highest evaluation score, the requesting department/party must provide written justification for such an award and obtain the written approval of the appropriate institutional official.

- 5.3.2 After the appropriate official's determination, the Institution will issue Intent to Award to identify the apparent best-evaluated proposal as in the RFP Section 2, Schedule of Events.

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

- 5.3.3 The Institution will also make the RFP files available for public inspection as in the RFP Section 2, Schedule of Events.

- 5.3.4 The Proposer with the apparent best-evaluated proposal must agree to and sign a contract with the Institution which shall be substantially the same as the RFP Attachment 6.2, *Pro Forma* Contract.

However, the Institution reserves the right, at its sole discretion, to add terms and conditions or to revise *Pro Forma* Contract requirements in the Institution's best interests subsequent to this RFP process. No such terms and conditions or revision of contract requirements shall materially affect the basis of proposal evaluations or negatively impact the competitive nature of the RFP process.

- 5.3.5 The Proposer with the apparent best-evaluated proposal must sign and return the Contract written by the Institution pursuant to this RFP no later than the Award of Contract Date in the RFP Section 2, Schedule of Events. If the Proposer fails to provide the signed Contract by the deadline, the Institution may determine that the Proposer is non-responsive to the terms of this RFP and reject the proposal.

- 5.3.6 If the Institution determines that the apparent best-evaluated proposal is non-responsive and rejects the proposal, the RFP Coordinator will re-calculate scores for each responsive Cost Proposal to determine the new, apparent best-evaluated proposal.

ATTACHMENT 6.1



HIGHER EDUCATION SYSTEM Minority / Ethnicity Form

In order to comply with reporting regulations required by the State of Tennessee and the United States federal income tax laws, it is necessary that the following information be provided prior to the issuance of any contract.

1. Name of Contractor: Federal ID / Social Security Number: 	2. Is Contractor a US citizen? ☐ Yes ☐ No If no, state country of citizenship: (If not a US Citizen, please include a copy of Visa with this form.)
3. Kind of Ownership (Check one): ☐ Govt. (GO) ☐ Agency of the State of Tennessee (SA) ☐ Non-Profit (NO) ☐ Majority (MJ) ☐ Minority* (see reverse side for definition) ☐ Woman (WO)** (see reverse side for definition) ☐ Small (SM)*** (see reverse side for definition) ☐ Service-Disabled Veteran****(see reverse side for definition)	4. Minority / Ethnicity Code (Check One): ☐ African American (MA) ☐ Native American (MN) ☐ Hispanic American (MH) ☐ Asian American (MS) ☐ Other Minority (MO) Specify: _____
5. Preference for reporting purposes: (Note: If Contractor qualifies in multiple categories as small, woman-owned and/or minority, Contractor is to specify in which category he / she is to be considered for reporting and classification purposes.) ☐ Small ☐ Minority ☐ Woman-Owned ☐ Service-Disabled Veteran	
6. Certification: I certify that all the information as completed above is accurate and true. 	
Signature _____ Date _____ Name (Printed): _____ Title: _____	

***Minority Ownership Clarification:**

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

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

- a) African American (a person having origins in any of the black racial groups of Africa);
- b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- c) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
- d) Native American (a person having origins in any of the original peoples of North America).

****Woman-Owned Business Clarification:**

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

*****Small Business Ownership Clarification:**

A "small business" means a business that is independently owned and operated for profit, is not dominant in its field of operation and is not an affiliate or subsidiary of a business dominant in its field of operation.

The Governor's Office of Diversity Business Enterprise establishes small business guidelines on industry size standards. The criteria guidelines are required to be met in order for a business to be considered small. The annual receipts or number of employees indicates the maximum allowed for a small business concern and its affiliates to be considered small.

******Service-Disabled Veteran Business Enterprise (SDVBE) Clarification**

Tennessee Service-Disabled Veteran owned mean any person who served honorably on active duty in the Armed Forces of the United States with at least a twenty percent (20%) disability that is service-connected meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service. "Tennessee service disabled veteran owned business" means a service-disabled veteran owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function.

Tennessee Service-Disabled Veteran owned means a service-disabled owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled owned veterans;

1. In the case of a business solely owned by (1) service-disabled veteran and such person's spouse, is at least fifty percent (50) owned and controlled by the service-disabled veteran; or
2. In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veteran and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

TYPE OF BUSINESS	ANNUAL GROSS SALES	NO. OF EMPLOYEES
Agriculture, Forestry, Fishing	\$500,000	9
Architectural / Design / Engineering	\$2,000,000	30
Construction	\$2,000,000	30
Educational	\$1,000,000	9
Finance, Insurance & Real Estate	\$1,000,000	9
Information Systems / Technology	\$2,000,000	30
Manufacturing	\$2,000,000	99
Marketing / Communications / Public Relations	\$2,000,000	30
Medical / Healthcare	\$2,000,000	30
Mining	\$1,000,000	49
Retail Trade	\$750,000	9
Service Industry	\$500,000	9
Transportation, Commerce & Utilities	\$1,000,000	9
Wholesale Trade	\$1,000,000	19

ATTACHMENT 6.2

PRO FORMA CONTRACT

The *Pro Forma* set forth in this Attachment contains some "blanks", signified in brackets by words in all capital letters, describing material to be added, along with appropriate additional information, in the final contract resulting from this RFP.

**CONTRACT
BETWEEN AUSTIN PEAY STATE UNIVERSITY
AND
[CONTRACTOR NAME]**

This Contract, by and between Austin Peay State University, hereinafter referred to as the "Institution" and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the "Contractor," is for the provision of [SHORT DESCRIPTION OF THE SERVICE], as further defined in the "SCOPE OF SERVICES."

The Contractor is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The Contractor's address is:

[ADDRESS]

The Contractor's place of incorporation or organization is [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

A.1. [DESCRIBE IN DETAIL THE SERVICES THE CONTRACTOR IS TO PROVIDE TO THE INSTITUTION AND THE SERVICES THAT THE INSTITUTION IS TO PROVIDE TO THE CONTRACTOR – THIS MAY BE A SUMMARY WITH DETAILED SPECIFICATIONS IN AN ATTACHMENT.]

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on [START DATE] and ending on [END DATE]. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than [WRITTEN NUMBER, NO GREATER THAN FIVE] years, provided that the Institution notifies the Contractor in writing of its intention to do so at least [WRITTEN NUMBER] [NUMBER] days prior to the Contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract. Expenditure contracts, other than real property contracts, may not have a contract term for a period in excess of sixty (60) months. Revenue contracts may not have a contract term for a period in excess of one hundred twenty (120) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Institution under this Contract exceed [WRITTEN DOLLAR AMOUNT] [\$NUMBER AMOUNT]. The Service Rates in Section C.3 include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs the work.
- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless this Contract is amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones listed below. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>[DUE DATE]</u>	<u>AMOUNT</u>
[SERVICE UNIT/MILESTONE EVENT]		\$(NUMBER AMOUNT)
[SERVICE UNIT/MILESTONE EVENT]		\$(NUMBER AMOUNT)

The Contractor shall submit monthly invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. [PICK ONE OF THESE OPTIONS]

The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

[OR]

Compensation to the Contractor for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to the Contractor, subject to the maximum amounts and limitations specified in the State Comprehensive Travel Regulations and pursuant to TBR Travel Policy, as they may be amended from time to time.

- C.5. Payment of Invoice. The payment of an invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Institution 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 Institution any amounts which are or shall become due and payable to the Institution by the Contractor.
- C.8. Retention of Final Payment. An amount of [WRITTEN DOLLAR AMOUNT] [\$NUMBER AMOUNT], representing [WRITTEN NUMBER] percent [NUMBER %] of the maximum total

compensation payable under this Contract, shall be withheld by the Institution until [WRITTEN NUMBER] [NUMBER] days after final completion of the services to be performed by the Contractor under this Contract.

D. TERMS AND CONDITIONS:

- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations as shown on the signature page of this Contract..
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract without cause for any reason. Termination under this Section D. 4 shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least [WRITTEN NUMBER] [NUMBER] days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any term of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. Subcontracting. The Contractor shall not 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 Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract 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 Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8. 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 disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or State constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate

to work performed or money received under this Contract, shall be maintained for a period of three (3) 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 Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Institution as requested. [SPECIFY TIME PERIOD – MONTHLY, QUARTERLY, SEMI-ANNUALLY, ANNUALLY, ETC.]
- D.12. 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.13. 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 the 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.

The Contractor, being an independent contractor and not an employee of the Institution, agrees to carry adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.15. 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, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution 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.18. Severability. If any terms or 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.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. ADDITIONAL TERMS AND CONDITIONS:

E.1. Communications and Contacts.

The Institution:

[NAME AND TITLE OF INSTITUTION CONTACT PERSON]
 [INSTITUTION NAME]
 [ADDRESS]
 [TELEPHONE NUMBER]
 [FACSIMILE NUMBER]

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]
 [CONTRACTOR NAME]
 [ADDRESS]
 [TELEPHONE NUMBER]
 [FACSIMILE NUMBER]

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties.

- E.2. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Termination under this Section E.2 shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.3. Breach. A party shall be deemed to have breached the Contract if any of the following occurs (However, this list is not exclusive.):

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the Institution shall have available the remedy of actual damages and any other remedy available at law or equity.
- (2) Liquidated Damages—In the event of a Breach, the Institution may assess Liquidated Damages. The Institution shall notify the Contractor of amounts to be assessed as Liquidated Damages. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by

the Institution in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damage amount is in addition to any amounts Contractor may owe the Institution pursuant to the indemnity provision or other section of this Contract.

The Institution may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the Institution exercises its option to declare a Partial Default, or the Institution terminates the Contract. The Institution is not obligated to assess Liquidated Damages before availing itself of any other remedy. The Institution may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether said service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days of any request, pertinent material from Contractor. The Institution shall make the final and binding determination of the amount.

The Institution may assess Liquidated Damages against the Contractor for any failure to perform. Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

- b. Institution Breach— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy available in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of the claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.4. Copyrights and Patents/Institution Ownership of Work Products. Contractor grants Institution a world-wide perpetual, non-exclusive, irrevocable, full paid up license to use and proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in any financial benefits derived from the commercial exploitation of all work products created, designed, developed, or derived from the services provided under this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under this Contract for internal purposes only.

The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any third party's intellectual property rights, including but not limited to any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract.

The Contractor further agrees that is shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the obligations of the Contractor to the Institution.

- E.5. Performance Bond. [ADD ONLY IF APPLICABLE] Upon approval of the Contract by all appropriate Institution officials in accordance with applicable state laws and regulations, the Contractor shall furnish a performance bond in the amount equal to [WRITTEN DOLLAR AMOUNT] (\$[NUMBER AMOUNT]), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the Institution, must be issued through a company licensed to issue such a bond in the State of Tennessee, and be provided to the Institution no later than [DATE]. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.

In lieu of a performance bond, a surety deposit, in the sum of [WRITTEN DOLLAR AMOUNT] [\$NUMBER DOLLAR AMOUNT], may be substituted if approved by the Institution prior to its submittal.

- E.6. Insurance. The contractor shall maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to,, bodily injury, personal injury, death, property damage and medical claims, with the minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability limits of \$100,000. The Contractor shall deliver to the Institution a certificate of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

- E.7. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services, such procurements shall be made on a competitive basis, when practical.
- E.8. Equipment/Inventory. The Contractor agrees to be responsible and accountable for the maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report with the required progress reports.

The Contractor shall notify the Institution, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the *pro rata* amount of the residual value at the time of loss based upon the Institution's original contribution to the purchase price.

Upon completion or cancellation of this Contract, all equipment purchased with funds provided under this Contract shall be returned to the Institution.

[OR]

Equipment/Inventory No equipment shall be purchased under this Contract.

- E.9. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E.10. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. This Contract document, its attachments and amendments
 - b. All Clarifications and addenda made to the Contractor's Proposal
 - c. The Request for Proposal and its associated amendments
 - d. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.

- E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with the Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontractors, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.12. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.13. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, employees from and against any and all claims or suits which may be brought against the Institution for infringement of any laws regarding patents or copyrights which may arise from the performance of this Contract. In any such action brought against the Institution, the Contractor shall satisfy and indemnify the Institution for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees

of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

- E.14. Authorized Individuals. Each party has provided the other party with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given hereunder by the party providing such list. Lists, which are attached hereto as Attachment [NUMBER], shall be valid until revoked or amended by further written notice. The parties shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.
- E.15. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.17. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated by this reference.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, 0620.

- E.18. Federal Economic Stimulus Funding. This contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grand Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).
- d. Any subrecipient Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-1, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.
- e. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1604 – Disallowable Use. No funds pursuant to this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - (2) Section 1512 - Reporting and Registration Requirements.
 - i. The Contractor must report on use of Recovery Act funds provided through this contract. Information from these reports will be made available to the public
 - ii. The subrecipient Contractor must maintain current registrations in the Center Contractor Registration (www.ccr.gov) at all times during which they have an active Contract funded with Recovery Act funds.
 - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - i. Gross mismanagement,

- ii. Gross waste,
- iii. Substantial and specific danger to public health or safety,
- iv. Abuse of authority, or
- v. Violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (4) Section 902 – Access of Government Accountability Office. The Contractor shall provide that the Comptroller General and his representatives are authorized:
 - i. To examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this contract or a subcontract; and
 - ii. To interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) Section 1514 – Inspector General Reviews. Any inspector general of a Federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552, 552a of title 5, United States Code.
- (6) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
 - i. To examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this contract; and
 - ii. To interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this contract shall be paid wages at rates not less than those prevailing on project of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40,

United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and , in the case of contracts subject to the Contract Work House and Safety Standards Act, watchmen or guards.

(8) Section 1605 – Buy American Requirements for Constructional Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

- f. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- g. If the Contractor enters into one or more subcontracts for any of the services performed under this contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.18, "Federal Economic Stimulus Funding."

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

[NAME AND TITLE]

Date

AUSTIN PEAY STATE UNIVERSITY:

Timothy Hall, President

Date

APPROVED:

TENNESSEE BOARD OF REGENTS (IF APPLICABLE):

John G. Morgan, Chancellor

Date

Authorized Individuals.

Austin Peay State University

1. Name
 Address
 Phone Numbers

2. Name
 Address
 Phone Numbers

3. Name
 Address
 Phone Numbers

Proposer

1. Name
 Address
 Phone Numbers

2. Name
 Address
 Phone Numbers

3. Name
 Address
 Phone Number

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.

SIGNATURE & DATE:

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.

ATTACHMENT 6.3**PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES**

The Proposer must complete and sign this Technical Proposal Transmittal. It 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 the individual is not the Proposer's chief executive, attach evidence showing the individual's authority to bind the proposing entity.

**PROPOSER LEGAL ENTITY
NAME:**

The Proposer does hereby affirm and expressly declare confirmation, certification, and assurance of the following:

- 1) This proposal constitutes a commitment to provide all services as defined in the RFP Attachment 6.2, *Pro Forma Contract*, Scope of Services for the total contract period and confirmation that the Proposer shall comply with all of the provisions in this RFP and shall accept all terms and conditions set out in the RFP Attachment 6.2, *Pro Forma Contract*. A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the Institution may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.
- 2) The information detailed in the proposal submitted herewith in response to the RFP is accurate.
- 3) The proposal submitted herewith in response to the RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
- 4) The Proposers shall 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;
 - e) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
 - f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
 - g) the condition 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 Proposer in connection with the Procurement under this RFP.
- 5) **The Proposer shall comply with all of the provisions in the subject RFP and shall accept all terms and conditions set out in the RFP Attachment 6.2, *Pro Forma Contract*.**
- 6) The Proposer ___does or ___does not agree to extend this proposal and current contract pricing to all TBR/UT Institutions for the same time period it is available to the Institution as Proposer has indicated in its proposal in response to Section 1.3 of this RFP.

**SIGNATURE &
DATE:**

ATTACHMENT 6.4**PROJECT NARRATIVE AND DOCUMENTATION****6.4.1 General**

Austin Peay State University seeks services in connection with the provision of an "Official Athletics Website" for its athletics department.

6.4.2 Timeline

The first year of the contract will include an initial three-month build-out period beginning April 1, 2012 and ending June 30, 2012 during which time the Contractor will produce a website in conjunction with approved University personnel. Following the build-out period, the website will be made available to the public. The first full year of the contract will have a beginning date of July 1, 2012 and ending date of June 30, 2013. The Institution reserves the right to renew the contract on an annual basis for up to four (3) additional one-year terms at its option.

6.4.3 Primary Specifications

6.4.3.1 The contractor must create, design and implement an Official Athletics Website and provide training to University personnel for maintaining and updating the website. The website should incorporate the following:

- a. Migration of current content and data from the current Austin Peay Official Athletics Website accessible through www.LetsGoPeay.com
- b. Website must be easily maintained and updated by University personnel with no additional software purchases
- c. A full online content management system that works seamlessly within any web browsing software (i.e. Internet Explorer, Firefox, Safari) and allows the ability to change all viewable content without third-party software
- d. Ability to integrate social media components such as Facebook, Twitter, YouTube, etc.
- e. Ability to use online news wire service (i.e. Associated Press) for photos and news stories.
- f. Ability to use the website as a Customer Relationship Management Tool, including the ability to do the following:

An online, opt-in e-mail and SMS text messaging system through which the University can conduct targeted e-mail marketing campaigns for athletic events, fundraising or other promotions.

- g. Ability to provide real-time data of athletics and athletics-related events compatible with current University statistical software (primarily StatCrew and Automated Scorebook).
- h. Ability to provide live audio and video streams of athletic events.
- i. Ability to provide on-demand archiving of audio and video streams.

6.4.3.2 The contractor must provide the following online merchandising functions. Note, the University will only permit licensed merchandise and property to be sold through the following outlets:

- a. Online Store
- b. Online Auctions
- c. Online Photo Store
- d. DVD Store
- e. Video and/or Audio Subscriptions and any future multimedia components
- f. Local and/or National Advertising
- g. Ability for additional functionality as new technology and/or additional programs are introduced or requested by the University

6.4.3.3 The Contractor must provide the following required tasks:

- a. Design site layout, including development of hypertext structure and organization of content for ease of use.
- b. Adapt existing University logos and color schemes to produce a cohesive visual theme/graphic design throughout the website.
- c. Design all site navigation tools
- d. Develop site help pages, guided tours, tutorials, etc. as necessary
- e. Develop either a mobile site or mobile application that is compatible with any current or future mobile technology

6.4.3.4 The Contractor shall sell advertising for the website in conjunction with the University

- a. The University reserves the right to approve the content of all advertisements. However, the University will not unreasonable withhold approval.
- b. The advertising delivery system must be capable of maximizing revenue opportunities for the University.

6.4.4 Security

- a. Must be PCI compliant. Proposer will assume liability for any violations.
- b. Please list and explain other security options available with your service.
- c. Demonstrate security measures are in place to ensure safety and confidentiality of student data to include both paper and intranet.

ATTACHMENT 6.5. – Section A

TECHNICAL PROPOSAL & EVALUATION GUIDE – SECTION A		
PROPOSER LEGAL ENTITY NAME:		
SECTION A – MANDATORY TECHNICAL REQUIREMENTS		
The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below. The RFP Coordinator will review the proposal 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 Director of Purchasing must review the proposal and attach a written determination. A determination that a proposal is non-responsive must be approved by the Chief Business Officer before notice may be sent out that the proposal has been rejected. In addition to the Mandatory Requirement Items, the RFP Coordinator will review each proposal for compliance with <u>all</u> RFP requirements		
Proposal Page # (to be completed by Proposer)	Mandatory Requirements	Institution Use ONLY
		Pass/Fail
	The Proposal must be delivered to the Institution no later than the Proposal Deadline specified in the RFP Section 2, Schedule of Events.	
	The Technical Proposal and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et. seq.</i>).	
	The Technical Proposal must NOT contain cost or pricing information of any type.	
	The Technical Proposal must NOT contain any restrictions of the rights of the State/Institution or other qualification of the proposal.	
	A Proposer must NOT submit alternate proposals.	
	A Proposer must NOT submit multiple proposals in different forms (as a prime and a sub-contractor).	
	A.1 Provide the Proposal Transmittal and Statement of Certifications and Assurances (RFP Attachment 6.3.) completed and signed by an individual empowered to bind the Proposer 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 Proposer or any individual who shall perform work under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee or Institution) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the Institution, and the Institution reserves the right to cancel any award.	

TECHNICAL PROPOSAL & EVALUATION GUIDE – SECTION A		
PROPOSER LEGAL ENTITY NAME:		
SECTION A – MANDATORY TECHNICAL REQUIREMENTS		
The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below. The RFP Coordinator will review the proposal 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 Director of Purchasing must review the proposal and attach a written determination. A determination that a proposal is non-responsive must be approved by the Chief Business Officer before notice may be sent out that the proposal has been rejected. In addition to the Mandatory Requirement Items, the RFP Coordinator will review each proposal for compliance with <u>all</u> RFP requirements		
Proposal Page # (to be completed by Proposer)	Mandatory Requirements	Institution Use ONLY
		Pass/Fail
	A.3 Provide a current bank reference indicating that the Proposer'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 Proposer has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
	A.5 Provide EITHER : (a) an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a positive credit rating for the Proposer (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.); OR (b) a Dun & Bradstreet short-form report, verified and dated within the last three (3) months and indicating a positive credit rating for the Proposer.	
	A.6 Provide a Minority/Ethnicity Form (Attachment 6.1).	
	A.7 Provide three examples (website address is adequate) of current work completed for NCAA Division I FCS members.	
	A.8 Provide three examples (website address is adequate) of current work completed for NCAA Division I FBS members.	

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION B**PROPOSER NAME:****SECTION B — QUALIFICATIONS & EXPERIENCE**

The Proposer must address ALL Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).

A Proposal Evaluation Team, made up of three or more Institution employees, will independently evaluate and score the proposal's "qualifications and experience" responses.

Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items
	B.1 Describe the Proposer's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and detail the name, mailing address, and telephone number of the person the Institution should contact regarding the proposal. (5 points)
	B.2 Provide a Statement of whether there have been any mergers, acquisitions, or sales of the Proposer company within the last ten years, and if so, an explanation providing relevant details. (5 points)
	B.3 Provide a Statement of whether the Proposer or any of the Proposer's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony, and if so, an explanation providing relevant details. (5 points)
	B.4 Provide a Statement of whether there is any pending litigation against the Proposer; and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair the Proposer's performance in a contract under this RFP. (5 points)
	B.5 Provide a Statement of whether, in the last ten years, the Proposer 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, and if so, an explanation providing relevant details. (5 points)
	B.6 Provide a Statement of whether there are any pending Securities Exchange Commission investigations involving the Proposer, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) will impair the Proposer's performance in a contract under this RFP. (5 points)
	B.7 Provide a brief, descriptive Statement indicating the Proposer's credentials to deliver the services sought under this RFP. (10 points)
	B.8 Indicate how long the Proposer has been performing the services required by this RFP and include the number of years in business. (10 points)
	B.9 Indicate the Proposer organization's number of employees, client base, and location of offices. (10 points)

Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items
	B.10 Provide a narrative description of the proposed project team and its organizational structure, list its members, and include resumes (10 points)
	B.11 Provide a statement of whether the Proposer intends to use subcontractors, and if so, the names and mailing addresses of the committed subcontractors and a description of the scope and portions of the work the subcontractors will perform. (10 points)
	B.12 Provide customer references for similar projects representing both three of the larger accounts currently serviced by the vendor and three completed projects as well as a list, if any, of all current contracts with the Institution or other Tennessee Institutions of Higher Education and all those completed within the previous five year period. Each reference must include: ▪ the company name and business address; ▪ the name, title, and telephone number of the company contact knowledgeable about the project work; and ▪ a brief description of the service provided and the period of service. The list of contracts with the Institution or higher education must include: ▪ the contract number; ▪ the contract term; and ▪ the procuring Institution or agency for each reference. <i>Each evaluator will generally consider the results of reference inquiries by the Institution regarding <u>all</u> references provided (both Institution and non-Institution). Current or prior contracts with the Institution are not a prerequisite and are not required for the maximum evaluation score possible, and the existence of such contracts with the Institution will not automatically result in the addition or deduction of evaluation points.</i> (10 points)
(Maximum Section B Score = 200)	
SCORE (for <u>all</u> Section B items above, B.1 through B.12):	

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION C**PROPOSER
NAME:****SECTION C — TECHNICAL APPROACH**

The Proposer must address ALL Technical Approach section items and provide, in sequence, the information and documentation as required (with the associated item references). A Proposal Evaluation Team, made up of three or more Institution employees, will independently evaluate and score the proposal's response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

Proposal Page # (to be completed by Proposer)	Technical Approach Items	Institution Use ONLY		
			Possible Points Score	Points Awarded
	C.1 Provide a narrative that illustrates the Proposer's understanding of the RFP requirements		50	
	C.2 Provide a narrative that illustrates how the Proposer will complete the scope of services, accomplish required objectives, and meet the Institution's project		50	
	C.3 Provide a narrative that illustrates how the Proposer will create, design and implementation of the site.		200	
	C.4 Provide a narrative that illustrates how the Proposer will train University personnel for maintaining and updating the site.		50	
	C.5 Provide a narrative that illustrates how the Proposer will provide online merchandising functions.		50	
	C.6 Provide a narrative that illustrates how the Proposer will provide the tasks as described in 6.4.3.3		100	
	C.7 Provide a narrative that illustrates how the Proposer will sell advertising.		100	
	C.8 Provide a narrative that illustrates how the Proposer will provide security.		50	
	C.9 Within narrative, describe the ability to provide a mobile site or mobile application that is		200	

	compatible with any current or future mobile technology as required in 6.4.3.2			
	C.10 Within narrative, describe online merchandising options provided and any subcontractors used by the contractor to provide those services as required in 6.4.3.3		100	
	C.11 Within narrative, describe the security to be used to ensure safety and confidentiality of customers (including students) that visit the site as required in 6.4.4		50	
Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i>				
Awarded Weighted Score Maximum possible raw weighted score <i>(i.e., 5 x the sum of item weights above)</i>				
X 300 <i>(maximum section score)</i>				
= SCORE:				

ATTACHMENT 6.6

COST PROPOSAL & SCORING GUIDE								
NOTICE TO PROPOSER: This Cost Proposal MUST be completed EXACTLY as shown.								
PROPOSER NAME:								
SIGNATURE & DATE:								
<i>NOTE: The signatory must be an individual or a company officer empowered to contractually bind the Proposer. If the Signatory is not the Proposer company president, evidence SHALL be attached showing the Signatory's authority to bind the Proposer.</i>								
COST PROPOSAL SCHEDULE								
The proposed cost, detailed below, shall indicate the proposed price for providing the entire scope of service including all services as defined in the RFP Attachment 6.2. <i>Pro Forma Contract, Scope of Services</i> for the total contract period. The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the Institution. All monetary amounts are United States currency.								
Cost Item Description	Proposed Cost					Institution Use ONLY		
	Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Possible Points Score	Points Awarded
Website setup, including initial design required in section 6.4.3.1								
Annual hosting fee, to include all services required in section 6.4.3.1								
Mobile site/mobile application setup required in section 6.4.3.2								
Mobile site/mobile application annual fee required in section 6.4.3.2								
<i>The RFP Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE. Calculations shall result in numbers rounded to two decimal places.</i>							Evaluation Cost Amount: (sum of all weighted cost amounts above)	
Lowest Evaluation Cost Amount from <u>all</u> Proposals Evaluation Amount Being Evaluated							SCORE:	
X 400 (maximum section score)							=	

REVENUE PROPOSAL & SCORING GUIDE								
NOTICE TO PROPOSER: This Cost Proposal MUST be completed EXACTLY as shown.								
PROPOSER NAME:								
SIGNATURE & DATE:								
<i>NOTE: The signatory must be an individual or a company officer empowered to contractually bind the Proposer. If the Signatory is not the Proposer company president, evidence SHALL be attached showing the Signatory's authority to bind the Proposer.</i>								
REVENUE PROPOSAL SCHEDULE								
The proposed cost, detailed below, shall indicate the proposed price for providing the entire scope of service including all services as defined in the RFP Attachment 6.2. <i>Pro Forma Contract, Scope of Services</i> for the total contract period. The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the Institution. All monetary amounts are United States currency.								
Revenue Item Description	Proposed Revenue					Institution Use ONLY		
	Year 1	Year 2	Year 3	Year 4	Year 5	Sum	Possible Points Score	Points Awarded
Percentage to the University of net sales from the online store.								
Percentage to the University of net sales from the online auctions.								
Percentage to the University of net sales from the online photo store.								
Percentage to the University of net sales from the DVD store.								
Percentage to the University of net sales from the Video and/or Audio Subscriptions and any future multimedia components.								
Percentage to the University of net sales from the Local Advertising/Sponsorships sold by the University								

Percentage to the University of net sales from the National Advertising/Sponsorships sold by the Contractor.								
Percentage to the University of net sales from the Ability for additional functionality as new technology and/or additional programs are introduced or requested by the University								
<i>The RFP Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE. Calculations shall result in numbers rounded to two decimal places.</i> Evaluation Cost Amount: <i>(sum of all weighted cost amounts above)</i>								
Lowest Evaluation Cost Amount from <u>all</u> Proposals Evaluation Amount Being Evaluated								X 400 <i>(maximum section score)</i> = SCORE:

PROPOSAL SCORE SUMMARY MATRIX

RFP Coordinator

Date

QUALIFICATIONS & EXPERIENCE Maximum Points: 200	PROPOSER NAME		PROPOSER NAME		PROPOSER NAME	
Evaluator Name						
Evaluator Name						
Evaluator Name						
Repeat as Necessary						
	SCORE:		SCORE:		SCORE:	
TECHNICAL APPROACH Maximum Points: 300						
Evaluator Name						
Evaluator Name						
Evaluator Name						
Repeat as Necessary						
	SCORE:		SCORE:		SCORE:	
PRESENTATION Maximum Points: 300						
Evaluator Name						
Evaluator Name						
Evaluator Name						
Repeat as Necessary						
COST PROPOSAL Maximum Points: 400	SCORE:		SCORE:		SCORE:	
PROPOSAL SCORE Maximum Points: 1200	TOTAL SCORE:		TOTAL SCORE:		TOTAL SCORE:	

ATTACHMENT 6.8

***LISTING OF TBR SYSTEM INSTITUTIONS
AND
THE UT SYSTEMS OF HIGHER EDUCATION***

Tennessee Board of Regents, Central Office
Austin Peay State University
East Tennessee State University
Middle Tennessee State University
Tennessee State University
Tennessee Technological University
University of Memphis
Chattanooga State Technical Community College
Cleveland State Community College
 TTC-Athens
Columbia State Community College
 TTC-Pulaski
 TTC-Hohenwald
Dyersburg State Community College
 TTC-Newbern
 TTC-Ripley
 TTC-Covington
Jackson State Community College
 TTC-Jackson
 TTC-Whiteville
 TTC-Crump
 TTC-McKenzie
 TTC-Paris
Motlow State Community College
 TTC-Shelbyville
 TTC-Murfreesboro
 TTC-McMinnville
Nashville State Community College
 TTC-Nashville
 TTC-Dickson
Northeast State Technical Community College
 TTC-Elizabethton
Pellissippi State Technical Community College
 TTC-Knoxville
Roane State Community College
 TTC-Oneida/Huntsville
 TTC-Harriman
 TTC-Jacksboro
 TTC-Crossville
Southwest Tennessee Community College
 TTC-Memphis
Volunteer State Community College
 TTC-Livingston
 TTC-Hartsville
Walters State Community College
 TTC-Morristown
University of Tennessee – Chattanooga
University of Tennessee – Knoxville
University of Tennessee – Martin
University of Tennessee – Memphis
University of Tennessee – Tullahoma

ATTACHMENT 6.9

Vendor Application Form

Form and instructions can be obtained at: www.apsu.edu/purchasing/vendor_info.htm

ATTACHMENT 6.10

Protest Bond

The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. The bond shall have certified and current Power-of Attorney for the Surety's Attorney-in-Fact attached.

KNOW ALL BY THESE PRESENTS:

That we,

(Name of Protestor)

(Address of Protestor)

as the Party filing a protest of the State of Tennessee's determination(s) regarding a Request for Proposal (RFP) process, hereinafter called the Protestor, and

(Name of Surety)

(Address of Surety)

as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Obligee, hereinafter called the Obligee, and in the penal sum of

\$ _____
(Dollar Amount of Bond)

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Obligee has issued a Request for Proposal bearing the RFP Number:

(RFP Number)

AND, the Protestor, as an actual proposer to the RFP, claims to be aggrieved in connection with said RFP process;

AND, the signature of an attorney or the Protestor on a request for consideration, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;

AND, neither a protest nor a stay of award shall proceed under the laws of the State of Tennessee unless the Protestor posts a protest bond, the Protestor does file this protest bond payable to the Obligee with a notice of protest regarding the subject RFP process;

AND, the Obligee shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination on the protest by the head of the affected agency;

AND, if the Protestor appeals the affected agency head's determination on the protest to the Chancellor, in accordance with subsection Tennessee Code Annotated, § 12-4-109(a)(1)(E)(vii), the head of the agency shall hold said protest bond until instructed by the Chancellor as to its disposition.

NOW, THEREFORE, this obligation or bond shall remain in full force and effect conditioned upon a decision by the Chancellor that:

A request for consideration, protest, pleading, motion, or other document is signed by an attorney or the Protestor, before or after appeal to the Chancellor, in violation of Tennessee Code Annotated, § 12-4-109(a)(1)(E)(ii);

the Protestor has brought or pursued the protest in bad faith; or

the Protestor's notice of protest does not state on its face a valid basis for protest.

In which case, this obligation or bond shall be immediately payable to the Obligee. Otherwise, this obligation or bond shall be null and void.

IN WITNESS WHEREOF, the Protestor has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers,

On this _____ day of _____ in the year _____

WITNESS:

(Name of Protestor)

(Authorized Signature of Protestor)

(Name and Title of Signatory)

(Name of Surety)

(Signature of Attorney-in-Fact)

(Name of Attorney-in-Fact)

(Tennessee License Number of Surety)

ATTACHMENT 6.11**Vendor Checklist for Prevention of Common RFP Mistakes that lead to Proposal Rejection**

1. Signed and dated "Proposal Cover and Certification Form".
2. Attachment 6.5 – Mandatory Requirements: MUST BE PROVIDED IN FORMAT STATED BY EACH REQUIREMENT
 - ___ Bank Reference (Attachment 6.5A. 3.)
 - Letter Format on bank letterhead
 - Signed within last three (3) months by authorized representative of bank
 - Positive Credit Verification (Attachment 6.5A.4.):
 - ___ Two (2) positive credit references
 - Letter Format
 - Prepared and signed within last three (3) months by vendors with whom Proposer has done business
 - ___ Official document or letter from accredited credit bureau within last three (3) months (Attachment 6.5 A.5.a.) Not Acceptable: Marketing materials which state credit rating
 - OR**
 - ___ Dun & Bradstreet short form report, verified and dated within last three (3) months (Attachment 6.5 A.5.(b.)
 - ___ Completed Minority/Ethnicity Form (Attachment 6.5A.6.)
 - ___ Statement regarding conflict of interest (Attachment 6.5A.2.)
 - ___ Signed and dated "Proposal Transmittal and Statement of Certifications and Assurances" form (Attachment 6.3)
3. Submission of Proposal
 - ___ On-Time Submittal (§1.9; Attachment 6.5.A.)
 - Deadline is in Section 2 – Schedule of Events
 - Submission by deadline includes Technical Proposal and Cost Proposal
 - Late Proposals will be IMMEDIATELY DISQUALIFIED (Attachment 6.5. A.)
 - ___ Separately Sealed Cost & Technical Proposals (Attachment 6.5.A.)
 - ___ **NO Cost Data of ANY type** (required cost or optional cost) in Technical Proposal (§§3.21, 3.3, Attachment 6.5. A.)
 - **Including ANY costs in Technical Proposal will result in IMMEDIATE DISQUALIFICATION**
 - ___ A proposer may not submit alternate proposals unless requested and must not submit one proposal as the prime contractor and another as a sub-contractor
 - Correct Format (§3):
 - ___ One (1) Original Technical Proposal (§3.1.2)
 - ___ One (1) Original Cost Proposal (§3.1.2)
 - ___ Correct number of requested copies of Technical Proposal (§3.1.2)
 - ___ Original Signature on Original Proposal. **NO** copied or digital Signatures on Original (Attachment 6.5A.1)

*** This checklist does not represent either a complete list of, or replacement for, the mandatory requirements listed in the RFP. This checklist is ONLY A TOOL meant to assist in the prevention of disqualification.**

**** Please also note that notations on proposals that materials submitted be kept confidential will not be honored. All bid documents and contracts become public records.**