



STATE OF TENNESSEE
Tennessee Board of Regents

REQUEST FOR PROPOSALS
FOR
Commissioning
SBC Project No. 166/000-05-2009

Release Date: January 25, 2010

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1 INTRODUCTION

1.1 Statement of Purpose

The Tennessee Board of Regents, an agency of the State of Tennessee, hereinafter referred to as the Owner, has issued this Request for Proposals (RFP) to define the Owner's minimum service requirements; solicit proposals; detail proposal requirements; and outline the Owner's process for evaluating proposals to select a Commissioning Agent(s).

Tennessee statutes (T.C.A. 4-15-101, et. seq.) empower the State Building Commission to award, subject to the approval of the State Building Commission, contracts for the improvement to real property for State of Tennessee projects. The Commission shall follow the "competitive sealed Cost Proposal procedure" as herein described, in order to achieve maximum competition among qualified Proposers and to obtain the highest level of quality at the best price for State projects "utilizing procedures that promote competition to the greatest extent possible".

The Owner intends to execute a contract between the Owner and one or more Proposer(s) to perform the work as identified in paragraph 1.2 Scope of Services below.

1.2 Scope of Service

The State of Tennessee, Tennessee Board of Regents, Department of Facilities Development, intend to secure contracts with a qualified consultant(s) who shall provide building commissioning services for Tennessee Board of Regents facilities. Commissioning services may be required for both existing buildings and new construction. They may also vary in scope and/or extent of services to be provided based upon the needs of the state. Project locations shall be throughout Tennessee, varying in number and location from year to year and subject to funding appropriation and/or availability of State funds.

Upon contracting for services, successful Proposers, as Contractors, shall serve as Commissioning Agent (CA) on behalf of the Tennessee Board of Regents and shall provide professional and specialized services in any appropriate technical discipline within the broad field of commissioning, as approved by the Tennessee Board of Regents of specified projects. The Tennessee Board of Regents shall manage commissioning activities through individual Commissioning Work Order Agreements, which stipulate the project-specific services and cost for each Commissioning project or assignment (See Commissioning Proposal and Work Order Agreement). The State of Tennessee, The University of Tennessee, Department of Finance and Administration, Real Property Administration and/or other state agencies may secure contracts for their respective state agencies under separate contracts.

1.3 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 State's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, 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 Owner or in the employment practices of the State of Tennessee's contractors. Accordingly, all vendors entering into contracts with the Owner 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 Owner 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.

Office of the Human Resources
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, TN 37217
615/366-4417

1.4 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 detailed in the RFP Section 2, Schedule of Events.

1.5 RFP Communications

- 1.5.1 Unauthorized contact regarding this RFP with employees or officials of the State of Tennessee other than the RFP Coordinator detailed below may result in disqualification from this procurement process.

- 1.5.1.1 Interested Parties must direct all communications regarding this RFP to the following RFP Coordinator, who is the State of Tennessee's only official point of contact for this RFP.

Trish Whitlock
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 664
Nashville, TN 37217
Telephone # 615/366-4476
Fax # 615/366-2196
E-mail rfpcoordinator@tbr.edu

- 1.5.1.2 Notwithstanding the foregoing, Interested Parties may contact the staff of the Governor's Office of Diversity Business Enterprise for general, public information regarding this RFP, assistance available from the Governor's Office of Diversity Business Enterprise, or potential future Owner procurements.
- 1.5.2 The Owner has assigned the following RFP identification number that must be referenced in all communications regarding the RFP as shown on the cover page: 166/000-05-2009.
- 1.5.3 Any oral communications shall be considered unofficial and non-binding with regard to this RFP.
- 1.5.4 Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the Owner. The Owner 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 Owner by a deadline date shall not substitute for actual receipt of a communication or proposal by the Owner.
- 1.5.5 The RFP Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.5.6 The Owner reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. The Owner's official responses and other official communications pursuant to this RFP shall constitute an addendum of this RFP.
- 1.5.7 The Owner will convey all official responses and communications pursuant to this RFP to the potential proposers from whom the Owner has received a Notice of Intent to Propose.
- 1.5.8 Only the Owner's official, written responses and communications shall be considered binding with regard to this RFP.
- 1.5.9 The Owner reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this RFP (e.g., written, facsimile, electronic mail, or Internet posting).
- 1.5.10 Any data or factual information provided by the Owner, 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 Owner's written consent to rely thereon.

1.6 Notice of Intent to Propose

Each potential proposer should submit a Notice of Intent to Propose (e.g. written, facsimile, or electronic mail) to the RFP Coordinator by the deadline detailed in the RFP Section 2, Schedule of Events. The notice should include:

- Proposer's name
- name and title of a contact person
- address, telephone number, e-mail address, and facsimile number of the contact person
- contractor license number, classification, expiration date, and license limit

A Notice of Intent to Propose creates no obligation and is not a prerequisite for making a proposal, however, it is necessary to ensure receipt of RFP amendments and other communications regarding the RFP (refer to RFP Sections 1.5, et seq., above).

1.7 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 addenda. 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.

1.8 Pre-Proposal Conferences

Pre-Proposal Conferences will be held at the time and date detailed in the RFP Section 2, Schedule of Events. The purpose of the conferences is to discuss the RFP scope of services. While questions will be entertained, the response to any question at the Pre-Proposal Conferences shall be considered tentative and non-binding with regard to this RFP. Questions concerning the RFP shall be submitted in writing prior to the Written Comments Deadline dates detailed in the RFP Section 2, Schedule of Events. To ensure accurate, consistent responses to all known potential Proposers, the official response to questions will be issued by the Owner as described in RFP Sections 1.5, et seq., above and on the date detailed in the RFP Section 2, Schedule of Events.

Attendance at Pre-Proposal Conferences is not mandatory. The conferences will be held at the location identified in RFP Schedule of Events.

2 RFP SCHEDULE OF EVENTS

The following Schedule of Events represents the Owner'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., Central Time.

RFP SCHEDULE OF EVENTS		
The Owner reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The Owner will communicate any adjustment to the Schedule of Events to the potential proposers from whom the Owner has received a Notice of Intent to Propose		
Technical Proposal – Part 1 EVENT	TIME	DATE (all dates are Owner business days)
1. Owner Issues RFP		January 25, 2010
2. Disability Accommodation Request Deadline		January 27, 2010
3. Pre-Technical Proposal Conference*	1:30 pm	February 3, 2010
4. Notice of Intent to Propose Deadline		February 5, 2010
5. Written Comments Deadline		February 5, 2010
6. Owner Responds to Written Comments		February 9, 2010
7. Proposal Deadline	11:00 am	February 18, 2010
8. Owner Opens Technical Proposals and Checks Mandatory Items		February 18, 2010
9. Owner Completes and Scores Proposals		March 3, 2010
10. Owner Completes Evaluation and Develops Recommendation		March 4, 2010
11. State Building Commission Approval	11:00 am	March 11, 2010
12. Owner Issues Intent to Award Notice Opens RFP Files for Public Inspection	1:00 pm	March 15, 2010
13. Begin Contract Signing		March 19, 2010
14. Contract Signature Deadline		March 26, 2010
15. Contract Start Date		April 1, 2010

*The conference will be held at:
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 664
Nashville, TN 37217

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. The Proposal shall be brief and to the point in a direct response to the information requested for each item.

3.1 Proposal Form and Delivery

3.1.1 Each response to this RFP must consist of a Technical Proposal (Part 1) and a Cost Proposal (Part 2) as described in Paragraphs 3.2 and 3.3 respectively.

3.1.2 Part 1 - Each Proposer must submit one (1) original and nine (9) copies of the Technical Proposal to the Owner in a sealed package in accordance with RFP Section 2, Schedule of Events. For convenience, a submittal guide is provided below in paragraph 3.1.5. The technical proposal must be clearly marked:

"Technical Proposal in Response to RFP- SBC Project No. 166/000-05-2009

3.1.3 Part 2 - Each Proposer must submit one (1) Cost Proposal to the Owner in a separate, sealed envelope that is clearly marked "Cost Proposal in response to RFP 166/000-05-2009 – Do Not Open". Response shall be in accordance with RFP Section 2, Schedule of Events.

3.1.4 Proposal documents must be submitted as follows:

SUBMITTAL GUIDE (Responses shall be submitted in accordance with RFP Section 2, Schedule of Events)			
Document	No. of Copies	Package Marking	RFP Reference
<u>Technical Proposal – Part 1</u> Pass/Fail Mandatory Requirement Items Mandatory Information Items Qualifications and Experience Technical Approach	Original and 9 copies	Technical Proposal in Response to RFP SBC No. 166/000-05-2009	Attachments 6.2, 6.3 & 6.6
<u>Cost Proposal – Part 2</u>	Original only	Cost proposal in response to RFP SBC No. 166/000-05-2009 Envelope provided by Owner	Attachment 6.4

3.1.6 The Owner must receive all proposals in response to this RFP, at the following address, no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events:

Trish Whitlock
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 664
Nashville, TN 37217
Telephone # 615/366-4476
Fax # 615/366-2196
E-mail rfpcoordinator@tbr.edu

3.1.7 A Proposer may not deliver a proposal orally or by any means of electronic transmission.

3.2 Technical Proposal – Part 1

3.2.1 The RFP Attachment 6.3, Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this RFP. This guide includes the following:

- a. Pass/Fail Mandatory Requirement Items
- b. Mandatory Information Items
- c. Qualifications and Experience
- d. Technical Approach

No pricing information (except for what is specifically requested) shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts (RFP Attachment 6.4) in the Technical Proposal shall make the proposal non-responsive and the Owner 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 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 Owner may determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference the Technical Proposal as required by this RFP and the Technical Proposal and Evaluation Guide.
- 3.2.6 The Owner 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.

3.3 Cost Proposal – Part 2

- 3.3.1 The Cost Proposal must be submitted to the Owner in a sealed envelope in accordance with RFP Section 2, Schedule of Events, and paragraph 3.1.3 and paragraph 3.1.5.
- 3.3.2 Each Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.4, Cost Proposal.
- 3.3.3 Each Proposer shall only record the proposed cost exactly as required by the Cost Proposal and shall not record any other rates, amounts, or information. It shall not record any text that could be construed as a qualification of the cost proposal.
- 3.3.4 The Proposer must sign and date the Cost Proposal.
- 3.3.5 If a Proposer fails to submit a Cost Proposal as required, the Owner shall determine the proposal to be non-responsive and reject it.

4 GENERAL REQUIREMENTS AND 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 Owner no later than the Written Comments Deadline detailed in the RFP Section 2, Schedule of Events. This will allow issuance of any necessary addenda 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 Owner, in writing, by the Written Comments Deadline.

4.2 RFP Addenda and Cancellation

The Owner reserves the unilateral right to issue addenda to this RFP in writing at any time. If an RFP Addenda is issued, the Owner will convey such addenda to the potential proposers who submitted a Notice of Intent to Propose. Each proposal must respond to the final written RFP and any exhibits, attachments, and addenda.

The Owner 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 Owner 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 Owner may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP. The Owner may consider any proposal that does not meet the requirements of this RFP to be non-responsive, and the Owner 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 Owner or otherwise qualify a proposal. The Owner may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected.

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 Owner 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.

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 general 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 general contractor. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.

4.3.8 The Owner 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 Owner shall consider any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.

4.3.9 The Owner 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, an employee or official of the State of Tennessee;

- 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 Owner 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.
- 4.3.9.5 For the purposes of applying the requirements of RFP subsection 4.3.9, et. seq., an individual shall be deemed an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.
- 4.3.10 The Owner reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this RFP. If the Owner waives minor variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such. Notwithstanding any minor variance, the Owner may hold any Proposer to strict compliance with this RFP.

4.4 Incorrect Proposal Information

If the Owner 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

- 4.5.1 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 Owner. Notwithstanding the foregoing, a Proposer shall not propose any additional cost amount(s) or rate(s) for additional services.

4.6 Assignment and Subcontracting

- 4.6.1 The Proposer awarded a contract pursuant to this RFP may not transfer, or assign any portion of the contract without the Owner's prior, written approval.
- 4.6.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Owner and with the Owner's prior, written approval.
- 4.6.3 At its sole discretion, the Owner reserves the right to refuse approval of any subcontract, transfer, or assignment.

4.7 Right to Refuse Personnel

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

4.8 Insurance

The Owner will require the apparent successful Proposer to provide proof of adequate professional malpractice liability insurance coverage before entering into a 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 Owner shall be in form and substance acceptable to the Tennessee Board of Regents and State.

- 4.8.1 A copy of the appropriate policy or a Certificate of Coverage fully listing all limits of liability, shall verify all required insurance and be submitted with a Contract pursuant to this RFP. Such insurance shall be maintained through the life of the contract. Renewal policies or Certificates of Coverage must be forwarded to the Tennessee Board of Regents within thirty (30) days upon issuance. Failure to maintain required insurance could be cause of cancellation of the Contract.

4.9 Licensure

- 4.9.1 Before a contract pursuant to this RFP is signed, the Proposer must hold all necessary, applicable business and professional licenses. The State may require any or all Proposers to submit evidence of proper licensure.

4.10 Service Location and Work Space

The service pursuant to this RFP is to be performed, completed, managed, and delivered as detailed in the RFP Attachment 6.1, Pro Forma Master Contract. Work space on the Owner's premises will not be available for contractor use.

4.11 Proposal Withdrawal

A Proposer may withdraw a submitted proposal at any time up to the Proposal Deadline time and date detailed 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

Each Proposer is liable for all proposal errors or omissions. A Proposer will not be allowed to alter or amend proposal documents after the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the Owner.

4.13 Proposal Preparation Costs

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

4.14 Disclosure of Proposal Contents

Each proposal and all materials submitted to the Owner in response to this RFP shall become the property of the Owner. 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. Notwithstanding, a list of actual proposers submitting timely proposals may be available to the public, upon request, directly after technical proposals are opened by the Owner.

Upon the completion of the evaluation of proposals, indicated by public release of an Intent to Award Notice, 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.

4.15 Contractor Registration

All service contractors with State of Tennessee contracts must be registered through the Department of Finance and Administration's Service Provider Registry prior to contract approval. However, registration with the State 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 for more information about the Service Provider Registry and to register "on-line."

4.16 Contract Approval

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

4.17 Contract Payments

All contract payments shall be made in accordance with the contract's Payment Terms and Conditions provisions (refer to RFP Attachment 6.1, Pro Forma Master Contract). No payment shall be made until the contract is approved as required by State laws and regulations. Under no conditions shall the Owner 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 or before the contract start date or after the contract end date specified by the contract.

4.18 Contractor Performance

The contractor shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and acceptance by the Owner. The Owner may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract.

4.19 Contract Amendment

During the course of this contract, the Owner may request the contractor to perform additional work for which the contractor would be compensated in accordance with the Contract. That work shall be within the general scope of this RFP. In such instances, the Owner shall provide the contractor a written description of the additional work, and the contractor shall submit a time schedule for accomplishing the additional work and a price for the additional work. If the Owner and the contractor reach an agreement regarding the work and associated compensation, such agreement shall be effected by means that is in accordance with the contract documents. The contractor shall not commence additional work until the Owner has issued a modification to the contract and secured all required approvals.

4.20 Severability

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

4.21 False Statement, Misrepresentation or Omission.

Any false statement, misrepresentation, or omission regarding a material fact concerning any aspect of a Proposer's submittals shall render the Proposer ineligible for award. The failure to submit information and documentation required by this RFP may also render the Proposer ineligible for award.

In the event a contract is awarded to the Proposer and it is later determined that the Proposer failed to disclose requested information, or made a false statement, misrepresentation or omission regarding a material fact concerning any aspect of this RFP, the Proposer may be considered in default and the Owner may terminate the contract immediately and/or withhold full or partial payment as it deems appropriate. In addition, the Owner may seek other available remedies to which it is entitled by law, including, but not limited to, debarment.

4.22 Completeness/Accuracy of Submittals.

The Proposer shall be fully responsible for and bound by all information and data included in any and all of its submittals and any appendices or attachments thereto.

- 4.22.1 It is the Proposer's responsibility to ensure that all information and data provided in any and all of its submittals in connection with this RFP are truthful, accurate and complete.

- 4.22.2 In the event that there are any material changes in the operations, management or performance capabilities of the Proposer or its listed subcontractors that may impact performance of the Contract Work after the submission of the documents, but prior to the award of the project, the Proposer shall immediately notify the Owner and inform it of the details of any such changes.

5 PROPOSAL EVALUATION AND CONTRACT AWARD

5.1 Evaluation Categories and Maximum Points

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

CATEGORIES	MAXIMUM POINTS POSSIBLE
Mandatory Requirement Items	Pass/Fail
Mandatory Information Items	--
Qualifications and Experience	40
Technical Approach	30
TOTAL	70
Cost Proposal	Low Proposal

5.2 Evaluation Process

5.2.1 The RFP Coordinator will use the RFP Attachment 6.3, Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation.

5.2.1.1 The RFP Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to RFP Attachment 6.3, 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 Owner will request clarifications or corrections; or, (3) the Owner will determine the proposal non-responsive to the RFP and reject it.

5.2.1.2 A Proposal Evaluation Team, made up of three or more employees of the State of Tennessee, 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 6.3, Technical Proposal and Evaluation Guide.

5.2.1.4 The Owner 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 Owner. The subject Proposer shall put any resulting clarification in writing as may be required by the Owner.

5.2.1.5 The Owner reserves the right to receive an oral presentation from firms scoring high on the Technical Proposal. Oral presentations and the number of firms interviewed are at the sole discretion of the Owner.

5.2.2 Evaluations of Technical Proposals will be completed in accordance with RFP Section 2, Schedule of Events. The RFP Coordinator will complete the Technical Proposal score for each Proposer. The points assigned by each team member to each Proposer will be summarized utilizing RFP Attachment 6.5.

5.2.2.1 The RFP Coordinator will open the Cost Proposals and establish the low Cost Proposal(s) that has been submitted by a responsible and responsive proposer. This will be done in accordance with the State Building Commission By-Laws, Policy and Procedure Item 5.04 Paragraph E. (This can be accessed at <http://state.tn.us/finance/rpa/policy.pdf>)

5.3 Contract Award Process – Pro Forma Master Contract

5.3.1 The RFP Coordinator will forward the results of the Cost Proposal evaluation that establishes the "Recommended Proposer(s)" with the low Cost Proposal to the proper officials of the Owner who will consider the cost proposal evaluation process results and all pertinent information available to make a determination about the recommendation of contract award(s) to the State Building Commission. The Owner reserves the right to make an award recommendation without further discussion of any proposal.

- 5.3.2 After the approval of the State Building Commission, the Owner will issue Intent to Award Notice to identify the approved Proposer on the Intent to Award Notice date detailed in the RFP Section 2, Schedule of Events. The Intent to Award Notice shall not create rights, interests, or claims of entitlement in either the approved Proposer or any other Proposer.
- 5.3.3 The Owner will also make the RFP files available for public inspection on the Intent to Award Notice date detailed in the RFP Section 2, Schedule of Events. RFP protest procedures can be accessed at <http://state.tn.us/finance/rpa/policy.pdf>.
- 5.3.4 The approved Proposer must agree to and sign a contract with the Owner which shall be substantially the same as the RFP Attachment 6.1, Pro Forma Master Contract. However, the Owner reserves the right, at its sole discretion, to add terms and conditions or to revise pro forma contract requirements in the Owner'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 approved Proposer must sign and return the contract drawn by the Owner pursuant to this RFP no later than the Contract Signature Deadline date detailed in the RFP Section 2, Schedule of Events. If the Proposer fails to provide the signed contract by the deadline, the Owner may determine that the Proposer is non-responsive to the terms of this RFP and reject the proposal.
- 5.3.6 If the Owner determines that the Recommended/approved Proposer is non-responsive and rejects the proposal after opening Cost Proposals, the RFP Coordinator will move that proposal to the side and start the Cost Proposal/Contract Award process over again as required by Paragraphs 5.2.2.1 through 5.3.5 above.
- 5.3.7 Contract award shall be subject to the contract approval of all appropriate State officials in accordance with applicable State laws and regulations.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE BOARD OF REGENTS
AND
TBD

SBC NUMBER 166/000-05-2009

This Contract, by and between the State of Tennessee, Tennessee Board of Regents hereinafter referred to as the "State" and TBD, hereinafter referred to as the "Contractor or Commissioning Agent," is for the provision of Building Commissioning and related services, as further defined in the "SCOPE OF SERVICES."

The Contractor's address is: TBD

The Contractor's place of incorporation or organization is State of TBD.

A. SCOPE OF SERVICES:

- A.1 The Contractor shall serve as Commissioning Agent on behalf of the State, and shall provide professional and specialized services in any appropriate technical discipline within the broad field of commissioning.

The Contractor shall implement contractual services requested and approved by the State for specified projects. Commissioning projects may vary in scope and/or extent of services according to the needs of the State.

- A.2. At the direction of the State, the Contractor shall provide building systems commissioning services to the State for new construction and existing facilities. Such services shall include but not be limited to the following:

- ☐ Act as Commissioning Agent for the State and provide Building Commissioning services;
 - conduct or participate in design and/or design review of building systems as directed;
 - prepare commissioning plans;
 - (a) document design intent;
 - (b) identify pre- and post-functional tests, maintenance and operational needs; and,
 - (c) recommend specific measures, which when implemented, cause the building's energy systems and controls to function as intended.
 - prepare commissioning reports;
 - conduct commissioning workshops;
 - develop and deliver training; and,
 - perform general consulting work related to commissioning; as directed by the State
- ☐ Provide troubleshooting and performance verification;
- ☐ Provide HVAC, mechanical, controls, electrical, and lighting systems analysis, security and other special systems analysis, as well as the identification of maintenance and operational needs or problems that affect energy consumption in new and existing State facilities;
- ☐ Provide analysis and specific recommendations that would improve the energy performance of State buildings.

- A.3 Provide services and deliverables as defined in the Contract Attachment 6.6 Project Narrative and Description, *Commissioning Services Performance Specification*.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing of TBD through TBD. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The State reserves the right to extend this Contract for a two-year period, and for an additional one-year period, for a total contract term of no more than five years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) 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 State'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.

B.3. Construction Term Extension. The State reserves the right to extend this contract for a period beginning at the end of the final term for the purpose of completing all commissioning activities associated with any Contract Attachment *Commissioning Work Order Authorizations*, initiated during the term(s) of the contract.

B.4. Contract Amendment. 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 State'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.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. The maximum liability of the State under this Contract is no dollars (\$00.00) for the Contract Term unless modified by a written amendment to this Contract. The State shall issue individual Work Authorizations (refer to Contract Attachment *Commissioning Work Order Authorization*). The Commissioning Work Order Authorization(s), which shall be budgeted and funded through individual projects, constitute the entire compensation due the Contractor for commissioning services and all of the Contractor's obligations hereunder for this Master Contract.

C.1.a. The Contract amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, travel and all other direct and indirect costs incurred or to be incurred by the Contractor regardless of the difficulty, hours worked, or materials or equipment required.

C.1.b. The Contractor shall be paid in accordance with Payment Rates detailed in Contract Section C.4 below.

C.1.c. The State is under no obligation to request work from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor's compensation shall be contingent upon the satisfactory completion of services defined in Section A. The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service no more than monthly. The invoices shall be submitted as Direct Rates (Option A) or Schedule of Values (Option B) as agreed to by the State.

C.3.a. Option A. The Contractor shall be compensated based on Direct Amount Rates for units of service authorized by the State in accordance with the payment rates as detailed in section C.4.

C.3.b. Option B. The Contractor shall be compensated based on satisfactory completion of tasks and deliverables of service authorized by the State in accordance with state approved Schedule of Values, that will be specific to each project.

- C.4. Compensation Basis. Compensation for the Contractor is applicable to all commissioning services authorized by the State, and applicable to fees for Additional Services as described in Sections C.7 and E.7. Each fee is a direct amount that includes, but is not limited to, all applicable taxes, fees, overhead, profit, travel, meals and lodging, and all other direct and indirect costs incurred or to be incurred by the Contractor regardless of the difficulty, hours worked, or materials or equipment required.

C.4.a. Direct Amount Rates

The following is a schedule of direct amount hourly fee rates per Contractor position applicable for this Contract.

	Commissioning Position	Hourly Rate
1	Principal	
2	Senior or Project Engineer	
3	Controls Specialist	
4	Staff Engineer	
5	Technical Staff	
6	Administrative Staff	

C.4.b. Specialized Services Consultant Multiplier

When necessitated by a project requirements and at the discretion of the State, the Contractor shall engage consultants or service-providers of specialized services. The multiplier for specialized services providers or consultants is one and twenty hundredths (1.20) times the amount as billed to the Contractor. All such services and rates shall be authorized in advance by the State.

Example: utilizing a security systems expert for commissioning the installation and verifying the performance of a comprehensive high-security system at a State prison.

- C.5. Rate Adjustment. A one-time rate adjustment will be permitted for all rates included in this Contract as set in Section C.4 above. This Contract shall become eligible for rate adjustment effective at the close of the initial contract term. Rate adjustment shall come into effect in conjunction with the initial contract term extension provision for two years (See Contract Section B.2), should that term extension be executed. No additional rate adjustment will be permitted for the duration of Contract term, inclusive of any term extensions. (See Contract Attachment Rate Adjustment Formula).

- C.5.a. The rate adjustment shall be by a percentage equal to eighty-five percent (85%) of the change in the Implicit Price Deflator for State and Local Government computed from the calendar quarter at the start of the contract through to the calendar quarter preceding the quarter of the adjustment.

- C.5.b. The Implicit Price Deflator (IPD) for State and Local Government is that number published in "Survey of Current Business" by the Bureau of Economic Analysis, US Department of Commerce. The IPD ratio is provided in the table "Quantity and Prices Indexes for Gross Domestic Product" under the State and Local Government category.

- C.6. Travel Expenses. In-State travel, lodging and meal expenses shall not be directly reimbursed nor separately compensated throughout the duration of this Contract or any extensions thereof. The State does not allow the cost of out of State travel to or from Tennessee as an eligible expense, nor payment of fees for personnel time during such travel.

- C.7. Additional Services Compensation. The Contractor shall receive compensation for authorized Additional Services as detailed in Section E.7 of this Contract, and payment shall be made in accordance with Contract sections C.1 through C.4 above.

- C.8. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State 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.9. 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 State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.10. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.11. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- 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 Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date.
- D.3.a. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered.
- D.3.b. 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.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. 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 State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (Sections D.6. and D.7.).

Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. 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.7. 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, national origin, or any other classification protected by Federal, Tennessee 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.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the State of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- D.8.a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner a completed and signed copy of the standard form entitled "Personnel used in Contract Performance" with each application for payment. This form is provided in the Contract Documents. Such attestations shall be maintained by the Contractor and made available to Tennessee State officials upon request.
- D.8.b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of the Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to Tennessee State officials upon request.
- D.8.c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- D.8.d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. The law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- D.8.e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the United States or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges against the State 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 seven (7) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 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 ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including 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. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, bad faith, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State 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 State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.
- D.16. 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, strikes, epidemics or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. 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 courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

James Adams, CM Assistant Director
Office of Facilities Development
TENNESSEE BOARD OF REGENTS
1415 Murfreesboro Road, Suite 664
Nashville, Tennessee 37217
TELEPHONE: 615-366-4458
FACSIMILE: 615-366-3992

Keith King, Project Management Director
Office of Facilities Development
TENNESSEE BOARD OF REGENTS
1415 Murfreesboro Road, Suite 664
Nashville, Tennessee 37217
TELEPHONE: 615-366-3983
FACSIMILE: 615-366-3992

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Conflict of Interest for Recent Contractual Relationship. For a State project designated to receive commissioning services, while the Contractor is serving as the State's Commissioning Agent, the Contractor shall have no current contractual relationship directly with the designer or other contractor presently involved in the same designated State project. Any such contractual relationship may present the appearance of a conflict of interest in matters of client obligations to the State and may thereby disqualify the Contractor from providing commissioning services for a particular project.
- E.4. Principal of Tennessee Company. For a State project designated to receive commissioning services, while the successful Proposer is serving as the State's Commissioning Agent (CA), neither the Contractor nor any of its officers shall hold an interest in a business enterprise that has other current involvement in the same designated State project. In such a case, neither the Contractor nor any of its officers shall be a principal, nor owner, nor hold a share in ownership of a business enterprise that is licensed to do business in Tennessee as an architect, engineer, building contractor, or any other commercial enterprise involved in the design and construction industry, wherein the business enterprise has current involvement in the same designated State project. Any such business affiliation may present the appearance of a conflict of interest in matters of client obligations to the State and will thereby disqualify the Contractor from providing commissioning services for a particular project.
- E.5. 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 State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. 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 State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.6. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- E.7. Additional Services. The Contractor shall be compensated for additional services in accordance with Section C of this Contract, provided such Additional Services fall within the scope and intent of the basic services specified under this Contract, and provided such Additional Services are approved in writing in advance by the State. (also refer to Contract Attachment *Commissioning Additional Services*.)
- E.8. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- I) Amendments to the Contract
 - II) The Master Contract and attachments
 - III) The Request for Proposal and its associated amendments (incorporated by reference)
 - IV) The Proposer's Proposal (incorporated by reference)

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.9. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.11. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information provided to the Contractor by the State or acquired by the Contractor on behalf of the State whether verbal, written, magnetic tape, cards or otherwise shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards. The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section. The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.
- E.12. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State 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 State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State 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.13. Date Time Hold Harmless. As required by Tennessee Code Annotated, Section 12-4-118, the Contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

In witness whereof, the State and the Contractor have executed this Agreement.

Contractor:

By: _____
President

Date _____

State:

Tennessee Board of Regents

Approved: _____
Dick J. Tracy
Executive Director – Facilities Development

Approved: _____
Dale Sims
Vice Chancellor—Business and Finance

Approved: _____
Christine Modisher
General Counsel

By: _____
Charles W. Manning
Chancellor

Date: _____