

4.8. State Right of Rejection

- 4.8.1. Subject to applicable laws and regulations, the Owner reserves the right to reject, at its sole discretion, any and all proposals.
- 4.8.2. The Owner may deem as nonresponsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFQ. Notwithstanding the foregoing, the Owner reserves the right to seek clarifications or to waive, at its sole discretion, a response's minor variances from full compliance with this RFQ. If the Owner waives variances in a response, such waiver shall not modify the RFQ requirements or excuse the Respondent from full compliance with such, and the Owner may hold any resulting vendor to strict compliance with this RFQ.
- 4.8.3. The Owner will review the response evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the evaluation team identifies any respondent that appears not to meet the responsive and responsible thresholds such that the team would not recommend the Respondent for potential contract award, this determination will be fully documented for the record. ("Responsive" is defined as submitting a response that conforms in all material respects to the RFQ. "Responsible" is defined as having the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

4.9. Assignment & Subcontracting

The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFQ without prior approval of the Owner. The Owner reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment. The Owner will document in writing the reason(s) for any rejection of a subcontract, transfer or assignment.

5. PROCUREMENT PROCESS & CONTRACT AWARD

5.1. Evaluation Guide.

The Owner will consider the information provided in a Respondent's Technical Response and any clarifications in the evaluation of each Respondent's Technical Response. The maximum evaluation points possible for each category are detailed below.

Evaluation Category	Maximum Points Possible
Mandatory Requirements (refer to RFQ Attachment A)	Pass/Fail
General Qualifications, Experience, Technical Qualifications, Experience & Approach (refer to RFQ Attachment B)	50
Technical Qualifications, Experience & Approach (refer to RFQ Attachment C)	50

The RFQ Coordinator and the Evaluation Team (consisting of three (3) or more State employees) will use the RFQ Attachments A-D to manage the evaluation and maintain evaluation records.

5.2. Technical Evaluation Phases:

Phase I: The RFQ Coordinator will evaluate the Mandatory Requirements set forth in RFQ Attachment A on a pass/fail basis to determine if the Respondent is responsive and responsible. If the RFQ Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

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

Phase II: Following the Phase I evaluation, the Owner will apply a standard equitable evaluation model, which will represent a qualitative assessment of each response. Each response will be scored by the Evaluation Team, according to the Technical Response & Evaluation Guides (See RFQ Attachments B & C). The RFQ Coordinator will total the average score from the evaluation team for each responsive and responsible Respondent's Technical Response Points for RFQ Attachments B & C to attain the "Technical Score".

5.3 Fee Response:

No later than the date specified in the Schedule of Events in Section 2 of this RFQ, the Respondents will submit, in a sealed envelope to the RFQ Coordinator, a proposed fee schedule ("Fee Proposal") on the form of Attachment E and E-1 to be used as the basis of negotiations for the fee component of the contract.

Following completion of the Technical Scoring, the RFQ Coordinator shall then open the Fee Response submitted by each of the three (3) Responders with the highest Final Technical Scores beginning with the Responder with the highest Final Technical Score and then in rank order for the remaining proposers. After opening each Fee Proposal, RFQ coordinator will then determine if:

- a. the response adequately meets RFQ requirements;
- b. clarifications or corrections are required for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFQ and reject it. Additionally, should the Owner declare any of the Responders in the Fee Evaluation phase to be non-responsive, the Owner may proceed to the next ranked Respondent and so forth.

Once the State has a Fee Proposal that meets the RFQ requirements, the State shall then commence negotiations with the Respondent for a mutually acceptable contract until the State has negotiated mutually acceptable contract. If the State cannot negotiate a mutually agreeable contract, then they shall proceed to the next ranked Respondent until the State has negotiated a mutually acceptable contract with one (1) Respondent. All negotiations will be documented for the procurement file and conducted in a manner that supports fairness and good faith. Such negotiations may also include clarifications of the scope of services and contract terms. The Respondent with whom the State has successfully negotiated a contract will be recommended to the State Building Commission Executive Subcommittee for contract award.

5.4. Additional Evaluation Matters:

5.4.1. No notice issued by the Owner, including the notice setting forth the Short List, the Notice of Intent to Negotiate or the Notice of Intent to Award shall create rights, interests, or claims of entitlement in any Respondent.

5.4.2. Any contract award is subject to the approval of the State Building Commission.

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENT ITEMS. All Respondents must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). All Respondents must also detail the response page number for each item in the appropriate space below. The RFQ Coordinator will review all responses 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 Evaluation Team must review the responses and attach a written determination. In addition to the Mandatory Requirement Items, the RFQ Coordinator will review each response for compliance with all RFQ requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Technical Response must be delivered to the State no later than the Technical Response Deadline specified in the RFQ § 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required.	
		The Technical Response must not contain cost or pricing information of any type.	
		The Technical Response must not contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must not submit alternate responses or multiple proposals in a different form.	
	A.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the Owner should contact regarding the response.	
	A.2.	Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).	
	A.3.	Detail the number of years the Respondent has been in business. The Respondent must have a minimum of five (5) years of experience in providing these services	
	A.4.	Provide the Statement of Certifications and Assurances (RFQ Attachment F) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFQ and any resulting contract. The document must be signed without exception or qualification.	

	A.5.	<p>Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.</p> <p>NOTE: Any questions of conflict of interest shall be solely within the discretion of the Owner, and the Owner reserves the right to cancel any award.</p>	
	A.6.	The outermost container displays RFQ Attachment H.	
	A.7.	<p>Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and demonstrates the Respondents ability to meet the insurance requirements set forth in this section.</p> <ul style="list-style-type: none"> (a) Insurance Company (b) Respondent's Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverage <ul style="list-style-type: none"> I. Workers' Compensation and Employers' Liability, without restriction as to whether covered by Workmen's Compensation law shall be according to statue with Employer's Liability one hundred thousand dollars (\$100,000) each occurrence, one hundred thousand dollars (\$100,000) disease, each employee, five hundred thousand dollars (\$500,000) disease, policy limits. II. Comprehensive Commercial General Liability , including Premises/Operations; Underground, Explosion, Collapse, Hazard; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and, Personnel Injury (Employment Exclusion deleted). Each occurrence not less than one million dollars (\$1,000,000) and not less than two million dollars (\$2,000,000) aggregate. III. Business Automobile Coverage (including owned, leased, hired, and non-owned vehicles. If there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) any Auto, each occurrence, combined single limit. IV. Professional Liability Insurance for all employees with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the annual aggregate. 	
<i>State Use – RFQ Coordinator Signature, Printed Name & Date:</i>			

TECHNICAL RESPONSE & EVALUATION GUIDE

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

RESPONDENT LEGAL ENTITY NAME:		Section B— General Qualifications & Experience Items
Response Page # (Respondent completes)	Item Ref.	
	B.1.	Provide a brief statement indicating your firm’s credentials to deliver the services required by this RFQ. Include number of employees, type of client base, and location of offices. Name of the location of the office(s) providing services.
	B.2.	<p>Provide the following:</p> <ul style="list-style-type: none"> a. Resumes of key personnel who shall be assigned by the Respondent to perform duties or services under the Contract. The resumes shall detail each individual’s title, education, current certifications, current position with the Respondent, employment history and experience highlighting projects of similar scope and complexity that are under construction or have been substantially completed. On the page opposite to the resume of each individual, please show the corporate organizational chart illustrating lines of authority and where this person is positioned. Such personnel shall include, but not be limited to, the principle personnel, field technicians, field engineers and other key personnel who may be required. A project executive must also be named as key personnel but not be exclusively assigned to Projects. b. Provide a reference (an Owner’s representative) for five (5) projects that the proposed individual has performed commissioning work. No more than three (3) of the references can be with work performed for the State of Tennessee. <p>Provide a Contact:</p> <ul style="list-style-type: none"> a. Name b. Address c. Telephone Number d. E-mail Address e. Project Name and Location <p>The Owner reserves the right to contact references given as well as any other sources available.</p>

	B.3.	<p>Provide the following information:</p> <ol style="list-style-type: none"> a. Describe what amount or percentage of the Respondent's business is dedicated to Commissioning activities as compared to other types of business engaged by the company. b. State the length of time the Respondent has been performing Commissioning services specifically required by this RFQ. c. Briefly describe the Respondent's experience in managing multiple Commissioning projects simultaneously, especially if sites are distributed over a diverse area.
	B.4.	<p>Detail your ability to provide LEED Commissioning Services and LEED Certification if requested. Include a minimum of three (3) past projects within the last 10 years that you provided LEED Commissioning Services and the Certification level.</p> <p>Provide a Contact:</p> <ol style="list-style-type: none"> a. Name b. Address c. Telephone Number d. E-Mail Address e. Project Name and Address <p>The Owner reserves the right to contact references given as well as any other sources available.</p>
	B.5.	<p>Provide the following:</p> <ol style="list-style-type: none"> a. A list of current projects on which the Respondent's firm is committed, and both the dollar volume and time frame for each, and what services are being provided. b. A list of all current contracts with the State of Tennessee and all those completed with the previous five (5) year period. c. Documentation of Respondent's commitment to diversity as represented by its business strategy, business relations, and workforce – this documentation should detail: <ol style="list-style-type: none"> 1. A description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability and small business enterprises. 2. A listing of the Respondent's current contracts with business enterprises owned by minorities, women, persons with a disability and small business enterprises, including the following information: <ol style="list-style-type: none"> i contract description and total value ii Contractor name and ownership characteristic (i.e. ethnicity, sex, disability) iii Contractor contact and telephone number 3. An estimate of the probable level of participation by minorities, women, persons with disability and small business enterprises in a contract awarded to the Respondent pursuant to this RFQ. 4. The percent of the Respondent's total current employees by ethnicity, sex and disability. <p>Provide Project Title, Client, Total Dollar Amount, Time Frame of the Project and Services Provided.</p>

	B.6.	Provide a statement of the Respondent's familiarity and experience with Tennessee State Hight Performance Building Guidelines (HPBr) in general, but also specifically address experience with sustainable applications in large footprint buildings, facilities having complex or multipart components, educational facilities or as otherwise may pertain to the services sought under this RFQ.
	B.7.	Provide a statement on the Respondent's familiarity and experience working as a participant – contributor in a multidisciplinary "Project Team" with other design professionals contracted to provide services on a project.
	B.8.	Provide the following: <ul style="list-style-type: none"> a. A summary description of a minimum of five (5) example projects a varying size, scope and complexity that are under construction or have been completed or substantially completed utilizing the commissioning services of the Respondent within the last five (5) years. No more than three (3) of the projects can be with work performed for the State of Tennessee. The information for each project shall include specific details on the extent of services provided by the Respondent. A Related Project History Form Attachment G-2 is provided for the Respondent's use in compiling and presenting this information. b. Arrange for written references to be sent directly to the RFQ Coordinator by the referee. References must be other than those associated with the State of Tennessee and this agency. Provided references shall report on current or recently completed projects. A Client Reference Form Attachment G-1 is provided for your referee's use in compiling and presenting their information. The owner reserves the right to contact references as well as any other sources available.
	B.9.	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.10.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFQ, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.

	B.11.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.12.	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFQ or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFQ.
	B.13.	<p>Provide a statement of whether there is any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFQ.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The Owner may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</p>
	B.14.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none"> (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency; (b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; <p>is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and has within a three (3) year period preceding the contract had one or more public transactions (federal, state or local) terminated for cause or default.</p>
SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score) = 50		
<i>State Use – Evaluator Identification:</i>		

ATTACHMENT C

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the Owner would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items
	C.1.	Provide a brief, descriptive statement indicating the Respondent’s approach to delivering the services sought under this RFQ for Pre-Construction Phase, Construction Phase, Acceptance Phase and One Year Corrective Period.
	C.2.	Provide a narrative describing the Respondent’s project management process, the process by which the Respondent’s staff and administrative support will manage the execution of the work. The narrative should clearly illustrate the entire project management process and demonstrate how the process will ensure project completion on schedule. Provide information on the software the Respondent will utilize. Provide sample of project management information flow, reports and communications. <ul style="list-style-type: none"> a. Provide the firm’s corporate organizational chart for projects illustrating lines of authority and where personnel are positioned. b. Provide the Respondent’s staffing for projects demonstrating the ability to provide professional management and administration throughout the project. c. Explain your firm’s process in estimation the commissioning projects cost, establishing a schedule of values, invoicing process and ability to maintain and manage the project price and accounts for costs to include the name of the software used and examples of documents.
	C.3.	Provide a brief but concise and thorough narrative and examples of reports, documentation and processes to your firm’s approach to the following Design Review process. <ul style="list-style-type: none"> a. Design Develop drawings and specification, comments and follow-up (back check). b. Construction drawings and specifications, comments and follow-up (back check). c. Project documentation review for constructability, sustainability, maintainability and coordination. d. Energy Analysis services. e. Value Analysis or Value Engineering services.
	C.4.	Provide a brief but concise and thorough narrative and examples of reports, documentation and processes to your firm’s approach to the following construction activities.

		<ul style="list-style-type: none"> a. Project initiation meeting and contractor partnering. b. Project scheduling process and procedures to ensure that the project is properly scheduled for commissioning work, kept on schedule and completed on time. Explain how your firm would handle a scheduling conflict with the General Contractor and/or Sub-contractors. c. Project tracking, reporting and communications to all parties throughout the project. Explain how your firm would ensure communications to all commissioning parties and handle a communications conflict. d. Development and/or certification of pre-functional check sheets and ensure that they are completed and project and/or code required installation tests. e. Development and certification of functional performance tests to ensure that they are complete. f. Project site inspections, how they are conducted, inspection activities, inspection reports, follow-up process and communications. g. Handling of RFIs and/or RFPs and change orders.
	C.5.	<p>Provide a brief but concise and through narrative and examples of reports, documentation and processes to your firm's approach to the following acceptance phase activities.</p> <ul style="list-style-type: none"> a. Preparation for the functional performance testing process. b. Air and water test and balance report verification. c. Processes utilized during the functional performance test process to include personnel requirements, use of testing equipment and software. d. Troubleshooting, problem solving and deficiency resolution process to include follow-up process to ensure deficiency correction. e. Preparation of deficiency cost value prior to substantial completion. f. Preparation, review, delivery of final commissioning report and documents. g. Out-of-season testing. h. Handling of warranty related items and pre-twelve month final inspection meeting.
	C.6	<p>Provide the following documentation.</p> <ul style="list-style-type: none"> a. A complete detailed task descriptive cost summary proposal with schedule of values from a recently completed project. This project cannot be one from this Owner. b. A complete copy of a Commissioning Functional Performance Test and Final Report from a recently completed project. The project cannot be one from this Owner. c. A complete copy of site inspection reports from a recently completed project. The project cannot be one from this Owner. d. A complete copy of a deficiency log or action item log and follow-up report or procedures to ensure corrective action has been accomplished from a recently completed project. The project cannot be from this Owner. e. A complete copy of design review comments and follow-up procedure to ensure that comments are addressed from a recently completed project. The project cannot be from this Owner.
SCORE (for all Section C—Technical Qualifications, Experience & Approach Items above):		
<i>(maximum possible score) = 50</i>		
<i>State Use – Evaluator Identification:</i>		
<i>State Use – RFQ Coordinator Signature, Printed Name & Date:</i>		

FEE RESPONSE (Include in a separately sealed envelope Refer to 3.3.3)

Job Position/Title	Direct Expense (1)	Direct Amount Rates (2)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(1) Direct Personnel Expense includes the hourly rate of employees engaged on the project by the Commissioning Agent, including company officers, professional engineers, staff engineers, commissioning technicians, specification writers, field administrators and clerical staff in consultation, research, production of specifications, and other documents pertaining to the project, commissioning, observations and inspections of the project. Direct Personnel Expense means the actual cost of the individual to the company, which may not exceed one hundred thirty nine percent (139%) of the individual's base salary. "Direct Personnel Expense" includes the cost of the individual's base salary and of mandatory and customary benefits such as employee benefits, insurance, sick leave, holidays and vacations, pensions, and similar benefits.

(2) Direct Amount Rates are the hourly compensation and is applicable to all commissioning services authorized by the Owner. The Direct Amount Rate for any employee shall not exceed a multiple of two and forty-five one hundredths (2.45) times the individual's Direct Personal Expense. The maximum allowable Direct Amount Rates shall be one hundred seventy five dollars (\$175.00). The Direct Amount Rates are the basis for establishing the hourly rates to be included in section C.3. of the Pro-forma Contract (Attachment I).

For each Job Position/Title listed above provide Attachment E-1 and attach to Fee Response submittal

SIGNATURE & DATE:

PRINTED NAME & TITLE:

LEGAL ENTITY NAME:

Compensation for travel, meals and lodging is not included in the hourly rates and shall be compensated in accordance with the State of Tennessee travel regulations and limits.

STATEMENT OF CERTIFICATIONS AND ASSURANCES

An individual responding in his or her individual capacity or legally empowered to contractually bind the Respondent must complete and sign the Statement of Certifications and Assurances below as required, and this signed statement must be included with the response as required by the Request for Qualifications.

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

- 1. The Respondent will comply with all of the provisions and requirements of the RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
4. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
5. The Respondent will comply, as applicable, with: (a) the laws of the State of Tennessee; (b) Title VI of the federal Civil Rights Act of 1964; (c) Title IX of the federal Education Amendments Act of 1972; (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and, (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
7. The Response submitted to the RFQ was independently prepared, without collusion, and under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with the request or any potential resulting contract.
9. The Response submitted in response to the RFQ shall remain valid for at least 120 days subsequent to the date of the Response opening and thereafter in accordance with any contract pursuant to the RFQ.
10. The Respondent acknowledges the following Addendums to this RFQ.

Addendum # _____ Signature and Date: _____

Addendum # _____ Signature and Date: _____

Addendum # _____ Signature and Date: _____

By signature below, the signatory certifies legal authority to bind the responding entity to the provisions of this request and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to be personally bound or to legally bind the responding entity.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.

SIGNATURE & DATE: _____

PRINTED NAME & TITLE: _____

LEGAL ENTITY NAME: _____

FEIN or SSN: _____

4. Discuss your satisfaction or dissatisfaction with the workmanship, technical abilities, professionalism, and interpersonal skills of the project managers and on-site technicians.

5. Describe any performance problems with the Respondent's personnel.

6. Discuss the Respondent's response to short lead-time, i.e., emergency or special requests?

7. Project completion. Please comment on assigned tasks being completed in compliance with the terms of the contract.

8. Project completion. Please comment on projects being completed on time and within budget.

9. Rate your level of satisfaction with both the appropriateness and quality of the work. Use a scale of one (1) to five (5), with one being "least satisfied" and five "most satisfied."

10. What are the main reasons would you procure this Respondent's services again?

Additional Comments:

RELATED PROJECT HISTORY FORM

Include project history form with submitted Technical Response for Qualifications and Experience, Section B, Items B.8

Name of Client _____

Procuring Agency (Federal, State, Municipal, Other)

Name of Business: _____

Address: _____ City: _____ State: _____ Phone: _____

Client Representative knowledgeable about the project work:

Name: _____ Title: _____

Phone: _____ Fax _____ E-mail: _____

Project Title: _____

Project or Contract Number: _____

Project Location (City, State) _____

Start Date: _____ Completion Date: _____

Program/ Agency Name: _____

Amount of Proposer's Contract: \$ _____

_____ Brief description of the project scope and service(s) provided: _____

Attach additional pages if necessary

PRO FORMA CONTRACT

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

- A.4. Deliverables. The Contractor shall provide services and deliverables as defined in the Work Order Authorization which shall be prepared in accordance with the process as defined in Contract Attachment 1.
- A.5. The State reserves the right to negotiate the Commissioning proposed costs at any time and to issue Work Order Modifications, Change Orders or Directives upon determination of a change in scope or failure of the Contractor to provide requested services.
- A.6. The State encourages the Contractor to maintain continuity of personnel on projects assigned pursuant to a Commissioning Proposal and Work Order Authorization. Continuity of personnel promotes efficiency in the performance of the Commissioning Proposal and Work Order Authorization.

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 total Contract term of not 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 this 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 Contract shall be automatically extended for a period beginning at the end of the final term for the purpose of completing all commissioning activities associated with any Commissioning Work Order Authorizations initiated during the term of the Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. The maximum liability of the State under this Contract is two million (\$1,000,000.00) for the Contract Term unless modified by a written amendment to this Contract. In accordance with Contract Attachment 1 the State shall issue individual Work Order Authorizations which shall be budgeted and funded through individual projects in order to request that Contractor provide services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for services provided under this Contract after a Work Order Authorization is issued to Contractor. The compensation set forth on the Work Order Authorizations shall constitute the entire compensation due to the Contractor for the services provided services provided under that Work Order Authorization and will be inclusive of all applicable taxes, fees, overhead, profit 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. The compensation set forth on the Work Order Authorizations will be set in accordance with Contract Section C.3.,C.4 and C.6. below. The Owner is under no obligation to request work from the Contractor in any specific dollar amount or to request any work at all from the Contractor during any period of this Contract.

C.2. Payment Methodology. The Contractor's compensation shall be contingent upon the satisfactory completion of services set forth in the Work Order Authorizations. The Contractor shall submit 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.

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.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 Work Order Authorization's Schedule of Values based on Direct Amount Rates for units of service that will be specific to each project.

C.3. Compensation Basis. Compensation to the Contractor for all commissioning services authorized by the Owner in a Work Order Authorization shall be set in accordance with the Direct Amount Rates or Specialized Services Consultant Multiplier set forth below.

a. Direct Amount Rates – The following is a schedule of direct amount hourly fee rates per Contractor positions applicable for this Contract.

<u>Commissioning Position</u>	<u>Hourly Rate</u>
Principal	_____
Senior or Project Engineer	_____
Controls Specialist	_____
Staff Engineer	_____
Technical Staff	_____
Administrative Staff	_____

b. The maximum allowable direct rate shall be \$175.00.

c. Specialized Services Consultant Multiplier
 When necessitated by 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.

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. The Contractor must include (in addition to other invoice requirements of the Contract) a complete itemization of travel compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations." All requests for compensation under this section must have been previously approved by the Owner in a Work Order Authorization.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Owner is not bound by this Contract until it is signed by the contract parties and approved by the appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Contract, said officials may include, but are not limited to the Office of the State Architect. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base Contract and, depending upon the specifics of the Contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Office of the Attorney General).
- D.3. Termination for Convenience. The Owner may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of Contract by the Owner. The Owner shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Owner 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. In no event shall the Owner's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Owner for any damages or claims arising under this Contract.
- 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 materially violates any terms of this Contract ("Breach Condition"), the Owner 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 Owner for damages sustained by virtue of any Breach Condition and the Owner may seek other remedies allowed at law or in equity for breach of this Contract.
- D.5. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services provided under this Contract without obtaining the prior written approval of the Owner. If such subcontracts are approved by the Owner, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest",
- D.6. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- The Contractor acknowledges, understands, and agrees that it and its performance under this Contract are subject to State Building Commission Policy and Procedure 12.02, "Organizational Conflicts of Interest," (the "SBC Conflict Policy"), and that Contractor has read and understands all of the provisions and requirements of same.
- 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 handicap or 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 Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the State of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner a completed and signed copy of the document, Exhibit A, hereto, semi-annually and at the beginning of each phase, as described in Section C.3, during the period of this Contract. If the Contractor is a party to more than one contract with the Owner, the Contractor may submit one attestation that applies to all contracts with the Owner. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semiannually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Owner.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.9. Licensure. The Contractor and its employees and all sub-contractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.10. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Owner, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as required.
- D.13. 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.14. 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.15. Limitation of Owner's Liability. The Owner shall have no liability except as specifically provided in this Contract. In no event will the Owner be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The Owner's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

- D.16. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, global pandemic, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the nonperforming Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the nonperforming Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the Owner of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the Owner within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. Contractor will not increase its charges under this Contract or charge the Owner any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- 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 Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.19. 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.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.21. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the Owner and hold it harmless for any costs to the Owner arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.22. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Owner to enforce the terms of this Contract.

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

- D.23. HIPAA Compliance. The Owner and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the Owner that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the Owner, including cooperation and coordination with Owner privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The Owner and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the Owner and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or

shall cease all work associated with the Contract. If the Owner terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the Owner and for all satisfactory and authorized services completed as of the termination date. Should the Owner exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the Owner any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- E.4. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member’s retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the Owner under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- E.5. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance including without limitation, the coverages set forth in this Section E.6. Such insurance shall provide for policy limits equal or greater to the amounts set forth herein and shall list the Owner as additional insured. A copy of the appropriate policy or a Certificate of Coverage submitted on an *Accord Form 25 Certificate of Liability Insurance* fully listing all limits of liability shall verify all required insurance. Such insurance shall be maintained through the life of the Contract. Renewal policies or certificates of coverage must be forwarded to the Owner within thirty (30) days upon issuance. Failure to maintain required insurance could be cause for cancellation of the Contract.
- a. Workers Compensation and Employer’s Liability, (without restriction as to whether covered by Workmen’s Compensation law): Workers Compensation: according to statute
- | | |
|------------------------|-----------|
| Employer’s Liability: | \$100,000 |
| Disease, each employee | \$100,000 |
| Disease Policy Limit | \$500,000 |
- b. Commercial General Liability, including:
- Premises / Operations; Underground, Explosion, Collapse Hazard; Products / Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; Personal Injury (Employment Exclusion deleted)
- Combined single limits for bodily injury and property damage:
- | | |
|------------------|-------------|
| Each Occurrence: | \$1,000,000 |
| Aggregate: | \$2,000,000 |
- Products and Completed Operations to be maintained for one year after final payment due under this Contract.
- c. Business Automobile Liability:
- Including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.
- Bodily injury and property damage combined single limits:
- | | |
|------------------|-------------|
| Each Occurrence: | \$1,000,000 |
|------------------|-------------|
- d. Professional Liability Insurance: Employed Architects and Engineers Professional liability shall be covered with a limit of not less than:
- | | |
|-------------------|-------------|
| Each Claim: | \$1,000,000 |
| Annual Aggregate: | \$2,000,000 |
- E.7. Ownership of Documents. Upon completion or termination of the Contract, the documents provided by the Contractor to the Owner as instruments of professional services shall be the property of the State of Tennessee, and may be used again by the Contractor only for the benefit of the State and on authority of the State Building Commission. Originals of these documents may remain in the files of the Contractor. The Contractor and the Contractor’s consultants may reuse any portion of the work prepared for this Project for other projects.

Except as set forth in the Contract or any subsequent agreements between Contractor and the Owner, Contractor shall have no liability for any future use by the Owner of the instruments of professional service provided by the Contractor under the Contract where Contractor is not engaged to provide services for such future use.

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. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, 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 or Marketing. 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. Contractor Commitment to Diversity. The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the Institution in form and substance as required by the State.

E.13. Iran Divestment Act. The requirements of Tenn. Code Ann. 12-12-101 et.seq., addressing contracting with persons with investments activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. 12-12-106.

(16) Deliverables for the above activities shall include but not be limited to pre-functional and startup checklists documentation, functional performance testing documentation, verification and reports, verification of proper procedures, deficiency resolution logs and reports, a compiled commissioning record, final commissioning report and other commissioning project closure documentation.

C.1.g Warranty Period Phase commissioning activities shall include but not be limited to the activities listed below:

- (1) Coordinate and supervise required seasonal or deferred testing, as well as deficiency corrections.
- (2) Return to the site at ten (10) months into the twelve (12) month warranty period and review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal commissioning.
- (3) Interview facility staff and identify problems or concerns in operating the building as originally intended. Make suggestions for improvements and for recording these changes in the O&M Manual.
- (4) Identify areas that may come under warranty or under the original construction contract.
- (5) Assist facility staff in developing reports, documents and requests for services to remedy outstanding problems.
- (6) At the direction of the Owner, the Commissioning Agent may be requested to assist in the development of a preventative maintenance plan, a detailed operating plan or an energy and resource management plan, or as-built documentation of record for the project.
- (7) Deliverables for the above activities shall include but are not limited to a building operations review report, warranty summary report and other documentation as required to compile a record for the project, seasonal testing and 10 month warranty review reports.

C.1.h The Owner may request additional tasks and deliverables to Commissioning Services that fall within the generally accepted area of Commissioning. These services may be requested in the initial request for Commissioning Services or during the any phase of the project. Deliverables for these services will be provided during the appropriate phase of the project. (See Section D.6 for Commissioning Work Order Amendment)

D. Proposed Project Cost: The Owner may submit two Commissioning Requests, one for the design phase and another for the construction through one year corrective period or one for the complete project, to the Commissioning Agent. The cost for Commissioning Services shall be presented to the Owner as follows:

D.1 The Owner shall provide the Commissioning Agent with general project scope objectives relating to commissioning activities (refer to *Commissioning Request Form*). Proposed Cost will be submitted to the Owner in required format provided in the *Commissioning Proposal Form*. Upon acceptance of the proposal, the *Commissioning Work Order Authorization* form will be signed and issued to the Commissioning Agent.

D.2 Proposed Cost shall be in response to the Owner's *Commissioning Request Form*. The proposed cost shall incorporate all cost for the proposed scope of services for the total commissioning project effort. A detailed itemized cost breakdown and summary by task, personnel and man hours, specific scope statement supported with task descriptions shall be attached to the *Commissioning Proposal and Work Order Authorization*. Additional personnel positions may be required pursuant to each Commissioning Work Order Authorization scope of service. Hourly rates for such additional personnel will be negotiated at the time of such an agreement and shall be relative to established hourly rates as offered in the Cost Proposal.

D.3 The Proposed Cost submitted in response to a Commissioning Request by the Owner is expressed as a "not to exceed" amount unless the owner specifically requests in writing a "lump sum" amount. The Commissioning Agents Proposed Cost shall be an all inclusive offer for the scope of services required by the Commissioning Request and defined in the Commissioning Plan for the duration of the total contract period. The Owner reserves the right to negotiate the Commissioning proposed costs at any time and to issue Work Order Modifications, Change

Orders or Directives upon determination of a change in scope or failure of the Commissioning Authority to provide requested services.

- D.4 The Commissioning Agent must sign and date the Commissioning Proposal. The Work Order Authorization becomes effective upon signature of the Owner. The Commissioning Authority will be authorized to start work upon an issuance of a formal notice to proceed.
- D.5 The Owner reserves the right to ascertain the confidence of the cost amount as proposed and/or the confidence that all work specified under this Commissioning Proposal can be accomplished for the proposed cost amount without penalty to the Owner of additional cost, project time or quality. If requested by the Owner, the Commissioning Agent shall be prepared to present evidence that a submitted Cost contains no clerical error, miscalculation, or other mistake and/or to provide other clarification of proposed costs submitted by the Commissioning Agent.
- D.6 Should commissioning activities or project requirements necessitate work beyond the scope and cost of the Commissioning Work Order Authorization, an amendment or change order may be initiated to modify the commissioning project's scope of services or cost amount.
- D.7 The Owner reserves the right to require written proof, prior to payment, that work has been completed as prescribed in the Owner's Commissioning Request Form and/or the Commissioning Agents proposal and if work has not been performed or deliverables not provided, the contract amount will be adjusted accordingly.

COMMISSIONING – WORK ORDER AUTHORIZATION

Issued by the State of Tennessee
Middle Tennessee State University Office of Facilities Development

This Work Order Authorization is for the provision of specified commissioning services at Middle Tennessee State University facilities. These services are further defined in the “Commissioning Proposal” and the documents, if any, referenced therein, describing Building Commissioning to be implemented in accordance with the commissioning Master Contract between the State and Contractor dated TBD.

SBC Project No: 000 / 000-00-00 Commissioning Work Order Number: 000 / 000-00-00X

Project Name: (Project Name)

Project Title: (Project Title)

Location: (Location)

Original Work Order Date: <u>(Date)</u>	<input type="checkbox"/> Original <input type="checkbox"/> Amendment <input type="checkbox"/> Change Order <input type="checkbox"/> Additional Services
Date This Change Initiated: <u>(Date)</u>	

Scope of Services:

Attach Contract Attachment *Commissioning Proposal* for the scope of services requested and/or required in the Commissioning project identified above:

Cost:

Original Commissioning Work Order Amount	.00
The Commissioning Work Order Sum prior to this modification <i>.(if applicable)</i>	.00
This modification (increases / does not change / decreases) the Commissioning Work Order Amount by	.00
New Commissioning Work Order Total, inclusive of this modification	.00

State:

Middle Tennessee State University

Reviewed: _____
James Adams
 CM Assistant Director - Office of Facilities Development

Approved: _____
Dick J. Tracy
 Executive Director - Office of Facilities Development

