



AGENDA

**ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #031
TUESDAY, JANUARY 31, 2017 - 10:00 A.M.
TN TOWER - 3rd FLOOR, NASHVILLE ROOM**

AGENDA ITEM	PAGE #
I. Call to Order	--
II. Approve Minutes from October 4, 2016 Meeting (see attached documentation)	3
III. New Business Proposed revisions to the following Central Procurement Office documents (see attached documentation): (1) <i>Procurement Procedures Manual of the Central Procurement Office</i> , Section 10.11. State Security Confidential Information – NEW.....	11
(2) Interagency Agreement Summary and Interagency Grant Agreement Summary Cover Sheets	14
(3) <i>Procurement Procedures Manual of the Central Procurement Office</i> , Section 11.2., General Information	20
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(5) Governmental Grant (GG) and Grant (GR) Templates C.6. Option 5 – Budget Line-Item Issue.....	28
(6) Governmental Grant (GG), Grant (GR), and FA Templates - Iran Divestment Act....	32
(7) Central Procurement Office Policy No. 2013-007, <i>Grant Management and Subrecipient Monitoring Policy and Procedures</i>	36
(8) <i>Procurement Procedures Manual of the Central Procurement Office</i> , Section 6.9. Meeting Expenses – NEW	41
(9) FA Template – optional language for protection of Federal Tax Information.....	43
IV. Other Business	--
V. Adjournment	--

**MINUTES OF OCTOBER 4, 2016
MEETING**



MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #030
TUESDAY, OCTOBER 4, 2016 – 2:00 P.M.
TN TOWER – 3rd FLOOR – NASHVILLE ROOM

Members in Attendance:

Mike Perry, Jason Mumpower, Buddy Lea, Sondra Howe, Ted Hayden

Members Participating by Phone:

Christopher Todd, Terry McKee

Others in Attendance:

Meryl McVicker, Toni Stuart, Jenny Young, Thad Watkins, Christopher Ivey, Don Ivancic, Bryan Chriske, Stroud Vaughn, Paul Krivacka, Charissa Taylor, Charlotte McKinney, Cameron Rush (Butler Snow)

I. Call to Order: Mike Perry, Chief Procurement Officer, called the meeting to order and recognized that a quorum of voting members was present.

II. Minutes from the August 2, 2016 Meeting: Mr. Perry asked if there were any corrections or additions to the minutes from the August 2, 2016 meeting. Seeing none, a motion was made by Jason Mumpower, Chief of Staff, Office of the Comptroller of the Treasury, to accept the minutes as presented. The motion was seconded by Buddy Lea, Assistant Commissioner, Department of Finance and Administration. All members voted in favor – none opposed.

III. New Business: Mr. Perry asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the Central Procurement Office (“CPO”) documents from the New Business section of the agenda.

(1) Amendment Request

Mr. Krivacka summarized the following points with regard to Amendment Request:

- The first change is relative to question #5 on the Amendment Request form. There was some ambiguity that dealt with the contract’s effective date and which date should be used. The words “Effective Date” have been qualified with the word “Original” to make it clear that the original contract’s effective date is to be used. The second change is relative to question #10. There is a Pre-Approval Endorsement

Request correction to reflect the name change of Office for Information Resources to Strategic Technology Solutions ("STS").

Mr. Perry asked if there were any corrections or additions to agenda item (1). Seeing none, Mr. Ted Hayden, Executive Director of Compliance, State of Tennessee Real Estate Asset Management, made a motion to recommend the Amendment Request as presented to the Procurement Commission for approval. The motion was seconded by Mr. Mumpower. All members voted in favor – none opposed.

(2) Edison Contract Entry Record Status Reset Request Model

Mr. Krivacka summarized the following points with regard to the Edison Contract Entry Record Status Reset Request Model:

- This Model is a legacy document from the old Office of Contracts Review ("OCR") that still has some relevance. This Model document is used by some agencies to request a change to the Edison Contract Record that does not amount to an amendment.
- For example, if an accounting code was entered incorrectly on the budget Summary Cover Sheet the agency would submit the Edison Contract Entry Record Status Request Model (or another written request) to document the requested change.

Mr. Lea asked if the intended audience for this request would be Edison or CPO. Mr. Krivacka indicated that the intended audience would be any procurement user who is managing a contract. For example, the Edison Contract Entry Record Status Reset Request would allow the procurement professional to correct certain errors that might exist in Edison.

Mr. Perry asked for clarification that the Edison Contract Entry Record Status Reset Request would come to the CPO for review and then asked if the agency would be making the changes or if Edison staff would make the changes. Mr. Krivacka indicated that Edison staff would be making the changes. Upon further review, Mr. Krivacka indicated that the Edison Contract Entry Record Status Reset Request would not need prior approval by the CPO. The request form facilitates correcting issues with respect to an Edison file for a contract as opposed to something that needs CPO review. Mr. Lea added that he thought that was the case as well.

Mr. Mumpower made a motion to recommend the Edison Contract Entry Record Status Reset Request Model to the Procurement Commission for approval contingent upon the following corrections:

- Capitalize the words "Summary Cover Sheet" in all instances on page 27 of the agenda packet; and
- Darken the text of the Edison screen shot shown on page 25 of the agenda packet.

It was pointed out that both of these corrections had been made prior to the meeting and all Advisory Council members were provided hard copies at the meeting showing the corrections. Mr. Mumpower restated his motion to move the item as it appeared in the extra packet.

The motion was seconded by Mr. Lea. All members voted in favor – none opposed.

(3) Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request

Mr. Krivacka summarized the following points with regard to the Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request:

- This is a new practice to assist in implementing Public Chapter No. 1009 that deals with vendor information related to IT that protects the State's infrastructure, data, etc. The CPO will ask STS to identify what vendors, contracts, information, etc., are subject to the confidentiality provisions of Tenn. Code Ann. § 10-7-504. The purpose is that once that data is identified as confidential, the State has the ability going forward to flag those contract files so that the information could be redacted in the event of a Public Records Act request.

Mr. Perry recalled a situation at the last Fiscal Review Committee ("FRC") meeting where there was some confusion over what information should be redacted and if a vendor should be identified by name. Mr. Perry stated that he was hopeful that this change will provide clarification for such situations in the future. Mr. Krivacka agreed and stated, for example, that if a contract is on the FRC consent agenda for extension or renewal, it would have the STS Endorsement included as part of the contract file. If the STS Endorsement checkbox indicates that the contract file contains confidential information, it would allow the procurement professional or records custodian to redact the necessary information in order to comply with Public Chapter No. 1009.

Mr. Perry mentioned that the CPO should incorporate this information into its training program and create a job aid to make sure the information is communicated well to agencies, particularly those that may be going before FRC. Mr. Krivacka agreed and stated that this will be important with respect to how the CPO does solicitations and how the CPO manages the protest process. It may also cause the CPO to revise how vendors and respondents are identified with respect to solicitations. Mr. Krivacka continued that it all starts with the STS Pre-Approval Endorsement Request which will notify all parties that there is potentially confidential information and how it should be handled.

Mr. Perry asked if there was any additional discussion in regard to agenda item (3). Seeing none, Mr. Lea made a motion to recommend the Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request as presented to the Procurement Commission for approval. The motion was seconded by Mr. Hayden. All members voted in favor – none opposed.

(4) *Procurement Procedures Manual of the Central Procurement Office* – Section 6.7. - Purchase Order Exemptions

Mr. Krivacka summarized the following points with regard to *Procurement Procedures Manual of the Central Procurement Office* – Section 6.7. - Purchase Order Exemptions:

- It remains a challenge to craft exemptions from the Purchase Order ("PO") and contract requirements. In some cases, exemptions from these requirements are needed. For example, when reserving rooms or convention space at a hotel, chances are the State will not be able to issue a PO to the hotel in order to reserve space and bind the hotel on the State's terms and conditions. Typically, these types of

transactions will have to be under the hotel's terms and conditions. Another example is that utility providers will most likely require the State to use their terms and conditions. Also, the US Postal Service is probably not going to agree to State PO terms and conditions, but rather, will insist upon the State agreeing to the US Postal Service's terms and conditions. These examples illustrate that there are valid reasons for Purchase Order Exemptions. The CPO attempted to create exemptions based on Small Purchase Authority and Informal Purchase Authority. For example there are certain exemptions that apply to Small Purchase Authority and certain exemptions that apply to Informal Purchase Authority such as landfill charges, books, periodicals, publications, advertisements, sponsorships, freight charges, bonding fees, etc. The Office of the Comptroller of the Treasury ("COT") expressed some concern that the way the Procurement Procedures Manual headings are categorized could cause some confusion. The CPO agreed and is proposing to change the heading for Section 6.7.1 from "Purchases over \$10,000" to "Informal Purchases" and to change the heading for Section 6.7.2 from "Purchases \$10,000 and under" to "Small Purchases." The reason for using the "Small Purchases" and "Informal Purchases" language is those are very well established categories. The concern by COT was there was no cap established in the 6.7.1 heading "Purchases over \$10,000"; however, the intent of the Policy Review Subcommittee was always to have a \$50,000 cap. It was never intended to be an unlimited cap.

- There was some confusion in the past about whether the P-Card itself was a form of exemption from the requirements of a PO or a contract, but it is not. The P-Card is simply a payment method just like cash or an electronic transfer and hopefully these changes will clarify that issue. The P-Card was never intended to be an exemption from the requirements of a PO or a contract.

Mr. Mumpower made a motion to recommend *Procurement Procedures Manual of the Central Procurement Office – Section 6.7. -Purchase Order Exemptions* to the Procurement Commission for approval contingent upon the following changes as explained by Mr. Krivacka:

- Section 6.7.1: change the heading from "Purchases over \$10,000" to "Informal Purchases"
- Section 6.7.2: change the heading from "Purchases \$10,000 and under" to "Small Purchases"

The motion was seconded by Mr. Lea. At this point, Chris Todd, Envirogreen, asked a question by phone. Mr. Todd asked if bullet three in Section 6.7.1 on page 38 of the agenda packet should have the word "not" after the word "charges" as follows: "Postage charges **not** in connection with use of postage meter machines owned or leased by the State." Mr. Krivacka explained that the State buys or leases postage machines and then buys the postage separately. The thought was that there could be an instance where postage for a large mailing project could be over \$10,000 but less than \$50,000, so the language is correct as written. Mr. Krivacka continued that in Section 6.7.2, the last bullet on page 39 of the agenda packet is also correct as it does need to have the word "not" after the word "charges" as follows: "Postage charges not in connection with a State leased or owned postage meter machine." In this instance, postage charges incurred directly through the US Postal Service that are not in connection with a postage machine would in most cases not exceed \$10,000.

Mr. Perry stated that a motion had been made and seconded on agenda item (4). All members voted in favor – none opposed.

(5) Optional Contract Clause – Prison Rape Elimination Act (“PREA”)

Mr. Krivacka presented the following points with regard to Optional Contract Clause – Prison Rape Elimination Act (“PREA”):

- The Department of Correction requested that this Prison Rape Elimination Act contract clause be added as an optional term and condition in all CPO contract models and templates and the configurator.
- As the name of the term indicates, the federal law applies to confinement facilities and the purpose is to prevent the incidence of prison rape.
- This would be an optional term and condition that would only apply to Department of Correction contracts.

Mr. Perry asked if there was any discussion on agenda item (5). Seeing none, Mr. Mumpower made a motion to recommend the Optional Contract Clause – Prison Rape Elimination Act (“PREA”) as presented to the Procurement Commission for approval. The motion was seconded by Mr. Lea. All members voted in favor – none opposed.

(6) Division of Health Care Finance & Administration (“HCFA”) Liquidated Damages Request

Mr. Krivacka presented the following points with regard to Division of Health Care Finance & Administration (“HCFA”) Liquidated Damages Request:

- In multiple discussions with HCFA, it was determined by the Subcommittee that HCFA had a strong need for its own Liquidated Damages provision to manage its contracts; many of which were health care industry specific, very large, and complicated.
- When there is non-compliance, HCFA has the ability to assess liquidated damages and require that the contractor enter into a corrective action plan, or a memorandum process, whereby they bring the contractor into compliance. If at the end of the memorandum process the contractor is in compliance, HCFA may waive the liquidated damages. This Liquidated Damages provision is a necessary tool for them to effectively manage HCFA contracts.
- This provision does not require an approved Rule Exception Request because it is an optional provision but will still require an approved Liquidated Damages Request so that CPO is aware of why it is being requested and how the liquidated damages amount was determined.

Mr. Mumpower made a motion to recommend the Division of Health Care Finance & Administration (“HCFA”) Liquidated Damages Request as presented to the Procurement Commission for approval.

Mr. Lea asked if this optional provision is only available to HCFA and no other state agencies. Mr. Krivacka responded that Mr. Lea was correct that this liquidated damages provision only applies to HCFA.

The motion was seconded by Mr. Hayden. All members voted in favor – none opposed.

(7) Liquidated Damages Request

Mr. Krivacka summarized the following points with regard to Liquidated Damages Request:

- The Liquidated Damages Request form was not materially changed. It was reformatted for ease of use. Previously it was arranged vertically and now is being arranged horizontally.

Mr. Mumpower made a motion to recommend Liquidated Damages Request as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Krivacka asked for permission to present agenda items (8) and (9) together as they are related. There were no objections.

(8) Request for Qualifications Template – Section A. Mandatory Requirement Items

(9) Request for Proposal Template – Section A. Mandatory Requirement Items

Mr. Krivacka summarized the following points with regard to the Request for Qualifications Template and the Request for Proposal Template – Section A. Mandatory Requirement Items:

- Item (8) deals with the Request for Qualifications (“RFQ”) Template - mandatory requirement items and item (9) deals with the Request for Proposal (“RFP”) Template – Section A. Financial Responsibility determination. There is a lot of symmetry between the two and the actual proposed language is very similar.
- Both items address the mandatory requirement items used to evaluate a potential respondent’s financial responsibility.
- The items that are currently included within the Standard Mandatory Requirement Items have been moved to the optional section.
- There are now additional instructions for the Solicitation Coordinator to consider the effect on competition of requiring excessive financial ability to perform documentation in light of the goods or services being procured.
- This adds flexibility for the Solicitation Coordinator to choose the most appropriate questions and documents to request in order to determine a respondent’s financial ability to perform.
- There are now a number of optional provisions for a respondent to show their financial ability to perform in contrast to previously having three default provisions. In some industries some respondents were unable to provide all three of the default provisions and it could be because they were privately held and not seeking credit.

Mr. Perry asked if this was the financial responsibility item that was previously deferred from the June Procurement Commission meeting. Mr. Krivacka confirmed that this was the same item that Chairperson Martin had deferred in June. Mr. Perry asked if all parties, including the Department of Finance and Administration (F&A) and the Comptroller’s Office were in agreement with the proposed changes that Mr. Krivacka described above. Mr. Krivacka confirmed that F&A and the Comptroller’s Office were in agreement with the proposed changes.

Mr. Lea stated that some state agencies may not be comfortable deciding among the various optional provisions for a respondent in a particular industry group to show their financial ability to perform. Mr. Lea asked if there was a resource in the CPO to help provide guidance with these decisions. Mr. Krivacka indicated that the CPO Risk Manager would be available to State agencies to assist them in deciding which of the optional provisions should be used. Mr. Krivacka indicated there are roughly five different types of options available for selection: bank reference, credit reference, credit bureau report, credit rating, and cash flow information. In addition, under current CPO rules, policies, and procedures, additional evidence of financial ability to perform can be requested if the optional provisions do not provide adequate evidence.

Mr. Lea added that the proposal does provide some much needed flexibility for industry variations and complexity of a particular procurement that may require audited financial statements.

Mr. Lea thanked Mr. Krivacka for the clarification and made a motion to recommend agenda items (8) Request for Qualifications Template – Section A. Mandatory Requirement Items and (9) Request for Proposal Template – Section A. Mandatory Requirement Items as presented to the Procurement Commission for approval. Seeing no other questions or comments, Mr. Hayden seconded the motion. All members voted in favor – none opposed.

Mr. Perry clarified for the record that the vote taken was for agenda items (8) and (9).

IV. Other Business: Mr. Perry stated that the date for the October Procurement Commission meeting would be changed to allow all members to be present but a date for the meeting had not been confirmed.

V. Adjournment: Seeing no other business, a motion for adjournment was made by Mr. Lea and seconded by Mr. Mumpower. All members voted in favor – none opposed.

***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE***

**SECTION 10.11, STATE SECURITY
CONFIDENTIAL INFORMATION**

NEW

REQUEST: Add a new section to the *Procurement Procedures Manual of the Central Procurement Office*, “State Security Confidential Information.”

10.11. *State Security Confidential Information.*

10.11.1. *Purpose.*

The Public Records Act includes numerous exceptions to the general proposition that all state records shall “be open for personal inspection by any citizen of this state,” as provided for in Tenn. Code Ann. § 10-7-503. One such exception is Tenn. Code Ann. § 10-7-504(i), which requires the state to keep as confidential “[i]nformation that would allow a person to obtain unauthorized access to confidential information or to government property.” Information that is confidential under subsection (i) includes but is not limited to: A.) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; B.) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; C.) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property; and D.) The identity of a vendor that provides goods and services used to protect government property, government employee information, or citizen information to the State. This section provides guidance as to the procedures a procurement professional should consider to comply with this requirement.

10.11.2. *Process.*

The STS Pre-Approval Endorsement includes, as part of the endorsement, an assessment as to whether the exception under Tenn. Code Ann. § 10-7-504(i), as it relates to information technology, applies to the solicitation or contract under review. If STS determines that the security exception applies, then a procurement professional should consider the following precautions to safeguard the confidential information.

- **Advertising the Solicitation:** A procurement professional should, after consultation with STS and CPO Legal, publicly advertise a copy of the solicitation, in accordance with Tenn. Code Ann. § 12-3-502(a). Each procurement professional should review the STS endorsement before publicly advertising the solicitation to determine whether the solicitation contains confidential information. Confidential information should be redacted prior to publicly advertising the solicitation. Once redacted, the procurement professional should publicly advertise a copy of the solicitation without the confidential information. Only those respondents who sign a non-disclosure agreement will have access to the confidential information via secure URL or similar protected, limited access.

Notice of Intent to Award and Open File Period: During the open file period, the procurement professional must take appropriate safeguards to protect confidential information, including the respondents’ identities. This may be accomplished by

randomly assigning a numeric value to reference the respondents' names and identities. Note: "Documents concerning the cost of protecting government property or electronic information shall **not** be confidential."

- **Contract Entry:** The procurement professional is responsible for making the appropriate notation in Edison to reflect the existence of confidential information.
- **Other:** If there is a Protest, a Public Records Request, or Report concerning the confidential information, the Solicitation Coordinator should consult with STS and CPO Legal concerning what information should be redacted consistent with Tenn. Code Ann. § 10-7-504(i). Similarly, if the subject contract is a Statewide Contract, then the information publicly available online should be limited accordingly. The Solicitation Coordinator will be the contact person for all requests.

10.11.3. *Permissible Disclosures.*

Tenn. Code Ann. § 10-7-504(i)(3)(D) authorizes a governmental entity to "upon request, provide the identity of a vendor to the comptroller of the treasury and the fiscal review committee of the general assembly." A procurement professional should notify the Fiscal Review Committee or the Comptroller of the Treasury that the confidential provision is applicable so they may exercise reasonable care in maintaining the confidentiality of the information, including the identity of the vendor.

**INTERAGENCY AGREEMENT
SUMMARY AND INTERAGENCY GRANT
AGREEMENT SUMMARY SHEETS**

REDLINE VERSIONS

REQUEST: Amend the Summary Cover Sheet included on the Interagency Agreement and the Interagency Agreement – Grant Model as follows:

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INTERAGENCY AGREEMENT SUMMARY

(Interagency Agreement between state agencies, including the University of Tennessee or Board of Regents colleges and universities)

Begin Date	End Date	Agency Tracking #	Edison ID
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<u>Contracting State Agency Name</u>		<u>Edison Supplier ID</u>
<u>Contracting State Agency Name</u>		<u>Edison Supplier ID</u>

Inserted Cells

CFDA #

Service Caption

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
TOTAL:					

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.	CPO USE - IA

Speed Chart (optional)	Account Code (optional)
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INTERAGENCY GRANT AGREEMENT COVER SHEET

(cost reimbursement grant agreement between two Tennessee state agencies, University of Tennessee, or Board of Regents colleges and universities)

Begin Date	End Date	Agency Tracking #	Edison ID		
Grantee Legal Entity Name		Edison Supplier ID			
Subrecipient or Contractor <input type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor		CFDA #			
Service Caption (one line only)					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
TOTAL:					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>CPO USE - IG</i>		
Budget Officer Signature					
Speed Chart (optional)	Account Code (optional)				

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**INTERAGENCY AGREEMENT
SUMMARY AND INTERAGENCY GRANT
AGREEMENT SUMMARY SHEETS**

CLEAN VERSIONS

REQUEST: Amend the Summary Cover Sheet included on the Interagency Agreement and the Interagency Agreement – Grant Model as follows:

		INTERAGENCY AGREEMENT SUMMARY (Interagency Agreement between state agencies, including the University of Tennessee or Board of Regents colleges and universities)			
		Begin Date	End Date	Agency Tracking #	Edison ID
Contracting State Agency Name			Edison Supplier ID		
CFDA #					
Service Caption					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
TOTAL:					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - IA</i>	
Speed Chart (optional)		Account Code (optional)			



INTERAGENCY GRANT AGREEMENT COVER SHEET

(cost reimbursement grant agreement between two Tennessee state agencies, University of Tennessee, or Board of Regents colleges and universities)

Begin Date	End Date	Agency Tracking #	Edison ID		
Grantee Legal Entity Name		Edison Supplier ID			
Subrecipient or Contractor <input type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor		CFDA #			
Service Caption (one line only)					
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
TOTAL:					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>CPO USE - IG</i>	
Budget Officer Signature					
Speed Chart (optional)		Account Code (optional)			

***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE***

**SECTION 11.2, GENERAL
INFORMATION**

REDLINE VERSION

REQUEST: Revise section 11.2. of the *Procurement Procedures Manual of the Central Procurement Office as follows:*

11.2. *General Information.*

Procurement professionals should utilize applicable templates and models when drafting procurement documents generated outside of the *Edison* system. When applicable, the templates must be utilized and deviations from the templates shall require an approved Rule Exception Request by oversight examiners. When a Rule Exception Request is not applicable, a written explanation for the deviation shall be provided by the agency head. The models are intended to be used as helpful guides or minimum standards that may be modified as needed, as long as any modifications are in compliance with any applicable statutory or regulatory requirements. Notwithstanding the foregoing, any modifications or additions to the contract model provisions prescribed by statute or by Tenn. Comp. R. and Regs. 0690-03-01-.17(2) or adding model contract provisions that are prohibited by Tenn. Comp. R. and Regs. 0690-03-01-.17(3) shall require an approved Rule Exception Request. All documents are available on the State Intranet website <https://teamtn.gov/cpo/>. Procurement professionals should refer to the intranet site frequently to ensure that the most up-to-date template is being utilized and submitted for requisite approvals.

The Intranet website, models, and templates cited herein are incorporated by reference into this Procurement Procedures Manual as though set forth verbatim herein, and the below listing of available templates and models are for informational purposes only. Links to these templates and models are set forth below. Each of these templates and models is self-explanatory. All questions regarding use of these templates and models should be directed to Central Procurement Office staff. Any and all changes or modifications thereto are subject to review and recommendation by the Advisory Council and approval by the Procurement Commission.

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***PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE***

**SECTION 11.2, GENERAL
INFORMATION**

CLEAN VERSION

REQUEST: Revise section 11.2. of the *Procurement Procedures Manual of the Central Procurement Office as follows:*

11.2. General Information.

Procurement professionals should utilize applicable templates and models when drafting procurement documents generated outside of the *Edison* system. When applicable, the templates must be utilized and deviations from the templates shall require an approved Rule Exception Request by oversight examiners. When a Rule Exception Request is not applicable, a written explanation for the deviation shall be provided by the agency head. The models are intended to be used as helpful guides or minimum standards that may be modified as needed, as long as any modifications are in compliance with any applicable statutory or regulatory requirements. Notwithstanding the foregoing, any modifications or additions to the contract model provisions prescribed by statute or by Tenn. Comp. R. and Regs. 0690-03-01-.17(2) or adding model contract provisions that are prohibited by Tenn. Comp. R. and Regs. 0690-03-01-.17(3) shall require an approved Rule Exception Request. All documents are available on the State Intranet website <https://teamtn.gov/cpo/>. Procurement professionals should refer to the intranet site frequently to ensure that the most up-to-date template is being utilized and submitted for requisite approvals.

The Intranet website, models, and templates cited herein are incorporated by reference into this Procurement Procedures Manual as though set forth verbatim herein, and the below listing of available templates and models are for informational purposes only. Links to these templates and models are set forth below. Each of these templates and models is self-explanatory. All questions regarding use of these templates and models should be directed to Central Procurement Office staff. Any and all changes or modifications thereto are subject to review and recommendation by the Advisory Council and approval by the Procurement Commission.

**MODEL INSTRUCTIONS FOR GU-RV,
GU-NC, GU, GU-USGS, RV, AND NC**

REDLINE VERSION

REQUEST: Revise the second instructional paragraph included in the following models: GU-RV, GU-NC, GU, GU-USGS, RV, and NC as follows. Include the asterisk (*) note in the No Cost (NC) and Revenue (RV) models only.

~~Documents of this type must adhere to this model with revisions only as instructions permit.~~ Insignificant deviations from this model, while always subject to disapproval, will, typically, not require a specific rule exception unless an oversight examiner requires separate documentation in a particular instance. If a formal rule exception request is not required, oversight approval of the document will constitute selected rule exception(s) as may be necessary. The models are intended to be used as helpful guides or minimum standards that may be modified as needed, as long as any modifications are in compliance with any applicable statutory or regulatory requirements. Notwithstanding the foregoing, any modifications or additions to the contract model provisions prescribed by statute or by Tenn. Comp. R. and Regs. 0690-03-01-.17(2) or adding model contract provisions that are prohibited by Tenn. Comp. R. and Regs. 0690-03-01-.17(3) shall require an approved Rule Exception Request.

*Use of this model shall require an approved Special Contract Request.

**MODEL INSTRUCTIONS FOR GU-RV,
GU-NC, GU, GU-USGS, RV, AND NC**

CLEAN VERSION

REQUEST: Revise the second instructional paragraph included in the following models: GU-RV, GU-NC, GU, GU-USGS, RV, and NC as follows. Include the asterisk (*) note in the No Cost (NC) and Revenue (RV) models only.

Insignificant deviations from this model, while always subject to disapproval, will typically not require a specific rule exception unless an oversight examiner requires separate documentation in a particular instance. If a formal rule exception request is not required, oversight approval of the document will constitute selected rule exception(s) as may be necessary. The models are intended to be used as helpful guides or minimum standards that may be modified as needed, as long as any modifications are in compliance with any applicable statutory or regulatory requirements. Notwithstanding the foregoing, any modifications or additions to the contract model provisions prescribed by statute or by Tenn. Comp. R. and Regs. 0690-03-01-.17(2) or adding model contract provisions that are prohibited by Tenn. Comp. R. and Regs. 0690-03-01-.17(3) shall require an approved Rule Exception Request.

*Use of this model shall require an approved Special Contract Request.

**GOVERNMENTAL GRANT (GG) AND
GRANT (GR) TEMPLATES – C.6,
OPTION 5, BUDGET LINE-ITEM ISSUE**

REDLINE VERSION

REQUEST: Revise section C.6 Option 5 of the Governmental Grant (GG) Contract Template and Grant (GR) Contract Template as follows:

Option 5: Grantee May Request Budget Line-Item Revisions

~~The Department of Transportation Agencies~~ may add the following Section as appropriate:

- C.6. Budget Line-item: Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may request revisions of Grant Budget line-items by letter, giving full details supporting such request, provided that such revisions do not increase total Grant Budget amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are explicitly set forth. Any increase in the total Grant Budget amount shall require a Grant Contract amendment.

**GOVERNMENTAL GRANT (GG) AND
GRANT (GR) TEMPLATES – C.6,
OPTION 5, BUDGET LINE-ITEM ISSUE**

CLEAN VERSION

REQUEST: Revise section C.6 Option 5 of the Governmental Grant (GG) Contract Template and Grant (GR) Contract Template as follows:

Option 5: Grantee May Request Budget Line-Item Revisions

Agencies may add the following Section as appropriate:

- C.6. Budget Line-item: Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may request revisions of Grant Budget line-items by letter, giving full details supporting such request, provided that such revisions do not increase total Grant Budget amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are explicitly set forth. Any increase in the total Grant Budget amount shall require a Grant Contract amendment.

**GOVERNMENTAL GRANT (GG), GRANT
(GR), AND FA TEMPLATES – IRAN
DIVESTMENT ACT**

REDLINE VERSION

REQUEST: Add a new provision to the Governmental Grant (GG) Contract Template and Grant (GR) Contract Template to address the Iran Divestment Act and revise the language in the FA Template to mirror this new language.

GR and GG Contract Templates:

D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, 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.

FA Template:

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons ~~withas defined at T.C.A. §12-12-103(5) that engage in~~ investment activities in Iran, shall be a material provision of this Contract. The Contractor ~~agreescertifies~~, 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.

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**GOVERNMENTAL GRANT (GG), GRANT
(GR), AND FA TEMPLATES – IRAN
DIVESTMENT ACT**

CLEAN VERSION

REQUEST: Add a new provision to the Governmental Grant (GG) Contract Template and Grant (GR) Contract Template to address the Iran Divestment Act and revise the language in the FA Template to mirror this new language.

GR and GG Contract Templates:

D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, 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.

FA Template:

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, 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.

**CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2013-007, *GRANT
MANAGEMENT AND SUBRECIPIENT
MONITORING POLICY AND
PROCEDURES***

REDLINE VERSION

REQUEST: Revise sections 3, 6, and 9.2.3. of the Central Procurement Office Policy 2013-007 Grant Management and Subrecipient Monitoring Policy and Procedures as follows:

3. Definitions:

“Cognizant State Agency” - means the State Agency whose funds comprise the greatest percentage of Awards received by a Subrecipient as determined by ~~Department of Finance and Administration (F&A) Policy 3~~the Central Procurement Office.

6. Cognizant Agency Determination Process.

The Cognizant State Agency shall be responsible for approving the ~~Grantee's~~Subrecipient's Cost Allocation Plan. Other State Agencies that grant funds to the ~~Grantee-Subrecipient~~ must abide by the Cost Allocation Plan approved by the Cognizant State Agency. The Cognizant State Agency is the State Agency whose funds compose comprise the greatest percentage of State grant funds received by the GranteeSubrecipient. The Central Procurement Office determines the Cognizant State Agency for each -GranteeSubrecipient. Determination of the Cognizant State Agency shall be made according to Department of Finance and Administration (F&A) Policy 3. Once assigned, the term of responsibility shall continue ~~indefinitely, although a State Agencies Agency may submit to the Central Procurement Office a written request and justification for a Cognizant State Agency redetermination. until the Department of Finance and Administration makes a new determination. Responsibility may be reassigned upon written request and justification to the Department of Finance and Administration by either the Cognizant State Agency or a Grantor State Agency.~~

9.2.3 Monitoring Activities

The Grantor State Agency's monitoring of the Subrecipients identified in its annual monitoring plan shall include:

- Any program-specific monitoring requirements;
- All applicable requirements of Title VI of the *Civil Rights Act of 1964*; ~~as defined in the Title VI Compliance Commission Advisory Memorandum No. 3, April 14, 2004;~~
- Reviewing any reports required by 2 C.F.R. §§ 200.328 – 200.329;
- Reviewing financial and programmatic reports required by the Grant Contract; and
- Ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award that the Grantor State Agency detected and communicated to the Subrecipient.

To the extent possible, there should be a separation of duties between monitoring staff and program operations staff to allow for independence and objectivity. Possible conflicts of

| interest should be disclosed in agency monitoring plans.

**CENTRAL PROCUREMENT OFFICE
POLICY NUMBER 2013-007, *GRANT
MANAGEMENT AND SUBRECIPIENT
MONITORING POLICY AND
PROCEDURES***

CLEAN VERSION

REQUEST: Revise sections 3, 6, and 9.2.3. of the Central Procurement Office Policy 2013-007 Grant Management and Subrecipient Monitoring Policy and Procedures as follows:

3. Definitions:

“Cognizant State Agency” - means the State Agency whose funds comprise the greatest percentage of Awards received by a Subrecipient as determined by the Central Procurement Office.

6. Cognizant Agency Determination Process.

The Cognizant State Agency shall be responsible for approving the Subrecipient’s Cost Allocation Plan. Other State Agencies that grant funds to the Subrecipient must abide by the Cost Allocation Plan approved by the Cognizant State Agency. The Cognizant State Agency is the State Agency whose funds comprise the greatest percentage of State grant funds received by the Subrecipient. The Central Procurement Office determines the Cognizant State Agency for each Subrecipient. Once assigned, the term of responsibility shall continue indefinitely, although a State Agency may submit to the Central Procurement Office a written request and justification for a Cognizant State Agency redetermination.

9.2.3 Monitoring Activities

The Grantor State Agency’s monitoring of the Subrecipients identified in its annual monitoring plan shall include:

- Any program-specific monitoring requirements;
- All applicable requirements of Title VI of the *Civil Rights Act of 1964*;
- Reviewing any reports required by 2 C.F.R. §§ 200.328 – 200.329;
- Reviewing financial and programmatic reports required by the Grant Contract; and
- Ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award that the Grantor State Agency detected and communicated to the Subrecipient.

To the extent possible, there should be a separation of duties between monitoring staff and program operations staff to allow for independence and objectivity. Possible conflicts of interest should be disclosed in agency monitoring plans.

PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE
SECTION 6.9, MEETING EXPENSES

NEW

REQUEST: Add the following as a new section to the *Procurement Procedures Manual of the Central Procurement Office*.

6. Exceptions to Competitive Procurements.

6.9. Meeting Expenses.

Meeting expenses may be procured under the same rules, policies, and procedures applicable for exercising Local Purchase Authority. A Special Contract Request will not be required. All terms and conditions for space rental should be reviewed by Agency legal counsel.

**FA CONTRACT TEMPLATE –
OPTIONAL LANGUAGE FOR
PROTECTION OF FTI**

REDLINE VERSION

REQUEST: Revise the optional text related to the Protection of Federal Tax Information included as part of the FA Contract Template as follows.

Protection of Federal Tax Information

Add one of the following options below *as a separate attachment* to the Contract for Contractors having access to Federal Tax Information ("FTI") during performance of the Contract. If unsure whether to include one of the options below, contact the Central Procurement Office's your agency's disclosure officer and legal team counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to electronic forms hard copies of FTI. Use

Option #2 when the Contractor may have access to hard copies electronic forms of FTI.

Option 1

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") means any includes return or return information, as defined by I.R.C. § 6103(b)(2), received directly from the Internal Revenue Service IRS, or obtained through an authorized secondary source, such as the Social Security Administration, (SSA), Federal Office of Child Support Enforcement, or (OCSE), Bureau of the Fiscal Service, (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information: received from the IRS or obtained through a secondary source.

4. CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

(1.4) All work will be done performed under the supervision of the Contractor or the Contractor's responsible employees.

(2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

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~~thousand dollars (\$\$1,000)~~ with respect to each instance of unauthorized disclosure. These penalties are prescribed by ~~I.R.C. §§~~IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

~~(2-2)~~ Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of ~~the~~this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as ~~one thousand dollars (\$\$1,000)~~ or imprisonment for as long as ~~one (1)~~ year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of ~~one thousand dollars (\$\$1,000)~~ for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. ~~These~~The penalties are prescribed by ~~I.R.C. §§~~IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

~~2.~~
~~(3)~~ Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to ~~contractors~~Contractors by 5-§ U.S.C. 552a(m)(1), provides that any officer or employee of a ~~contractor~~Contractor, who by virtue of his-~~or~~/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency~~entity~~ not entitled to receive it, shall be guilty of a misdemeanor and fined not more than ~~five thousand dollars (\$\$5,000)~~.

~~2.~~
~~(4)~~ Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of ~~I.R.C. §§~~IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10). For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

~~3.~~ III. INSPECTION

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The IRS and the State, with 24 hour notice, shall have the right to send its officers and employees inspectors into the offices and plants of the Contractor for inspection of the to inspect facilities and operations provided for the performance of performing any work with FTI under this Contract. for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, specific measures corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Option 2

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR GENERAL SERVICES TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") means any includes return or return information, as defined by I.R.C. § 6103(b)(2), received directly from the Internal Revenue Service or IRS or obtained through an authorized secondary source, such as the Social Security Administration, (SSA), Federal Office of Child Support Enforcement, or (OCSE), Bureau of the Fiscal Service. FTI includes (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

4. CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
(2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
(3) Any federal tax returns return or return information (hereafter referred to as returns or return information), made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall will be treated as confidential and shall will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or

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disclosure ~~Contract. Disclosure~~ to anyone other than an officer or employee of the contractor is ~~Contractor will be~~ prohibited.

4.3

(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

(5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information. 4.4

(8) No work involving ~~returns and return information~~ Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.

4.5

(9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

4.6

(10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2 (11) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS;

2-

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars (~~\$\$5,000~~) or imprisonment for as long as five (~~5~~) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars (~~\$\$1,000~~) with respect

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to each instance of unauthorized disclosure. These penalties are prescribed by IRC §§ IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2-2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as ~~one thousand dollars (\$\$1,000)~~ or imprisonment for as long as ~~one (1)~~ year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of ~~one thousand (\$\$1,000)~~ for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC §§ 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

2- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to ~~contractors~~ Contractors by 5 U.S.C. § 552a(m)(1), provides that any officer or employee of a ~~contractor~~ Contractor, who by virtue of his ~~or~~ her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than ~~five thousand dollars (\$\$5,000)~~.

2- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRC §§ IRCs, 7431, 7213, and 7213A. (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. III. INSPECTION

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The IRS and the State, with 24 hour notice, shall have the right to send its ~~offeers and employees~~ inspectors into the offices and plants of the Contractor ~~for inspection of the to~~ inspect facilities and operations ~~provided for the performance of performing any work with~~ FTI under this Contract. ~~for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI.~~ On the basis of such inspection, ~~specific measures~~ corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

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**FA CONTRACT TEMPLATE –
OPTIONAL LANGUAGE FOR
PROTECTION OF FTI**

CLEAN VERSION

REQUEST: Revise the optional text related to the Protection of Federal Tax Information included as part of the FA Contract Template as follows.

Protection of Federal Tax Information

Add one of the following options below *as a separate attachment* to the Contract for Contractors having access to Federal Tax Information (“FTI”) during performance of the Contract. If unsure whether to include one of the options below, contact your agency’s disclosure officer and legal counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to hard copies of FTI. Use Option #2 when the Contractor may have access to electronic forms of FTI.

Option 1

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information (“FTI”) includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as

confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.

- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (7) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (8) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages,

plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or entity not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Option 2

ATTACHMENT REFERENCE

FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGYSERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security

Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

- (8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (11) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by

the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.