



AGENDA
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #038
MONDAY, JUNE 4, 2018, 10:00 A.M.
TN TOWER – 3rd FLOOR, NASHVILLE ROOM

AGENDA ITEM	PAGE #
I. Call to Order	--
II. Introduction of New Advisory Council Member – Lynn Farnham	
III. Approve Minutes from April 5, 2018 Meeting (see attached documentation)	3
IV. 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 10.12, Federal Awards Procurement Standards - NEW (2) Federal Awards Procurement Standards - Optional Purchase Order ("PO") and Configurator Term - NEW (3) Grant Templates and Models – Section E #. Clean Air Act and Federal Water Pollution Control Act - NEW (4) Fee for Goods and Services Template ("FA") – Section E #. Equal Opportunity (5) Fee for Goods or Services Template ("FA") – Section D.32, Insurance (6) Fee for Goods or Services Template ("FA") – Section E #. State Insurance Program - NEW	 14 16 18 20 24 36
V. Other Business	--
VI. Adjournment	--

**MINUTES OF APRIL 5, 2018
MEETING**



MINUTES
ADVISORY COUNCIL ON STATE PROCUREMENT MEETING #037
THURSDAY, APRIL 5, 2018 – 10:00 A.M.
TN TOWER – 3rd FLOOR – NASHVILLE ROOM

Members in Attendance:

Mike Perry, Buddy Lea, Summer Carr, Bryan Chriske (designated by Comptroller Wilson to attend in Jason Mumpower's absence).

Others in Attendance:

Paul Krivacka, Don Ivancic, Alex Komisar, Toni Stuart, Jenny Young, Kevin Scarborough

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. Announcement: Mr. Perry announced that Bryan Chriske was designated by Comptroller Wilson to represent the Comptroller's Office as Jason Mumpower was unable to attend the meeting.

III. Minutes from the January 29, 2018 Meeting: Mr. Perry asked if there were any corrections or additions to the minutes from the January 29, 2018 meeting. Seeing none, a motion was made by Mr. Bryan Chriske, Office of the Comptroller of the Treasury, to accept the minutes as presented. The motion was seconded by Mr. Buddy Lea, Assistant Commissioner, Department of Finance and Administration. All members voted in favor – none opposed.

IV. New Business:

Mr. Perry asked Paul Krivacka, Lead Attorney/Director of Category Management, Central Procurement Office, to present the following New Business agenda items:

Mr. Krivacka noted that there were 18 agenda items, some of which were very similar, and so asked that agenda items (3), (4), and (5) be combined for discussion.

Mr. Krivacka proceeded to present agenda item (1):

(1) *Procurement Procedures Manual of the Central Procurement Office, Section 8, Protest and Stay of Award*

Mr. Krivacka summarized the following point with regard to the *Procurement Procedures Manual of the Central Procurement Office, Section 8, Protest and Stay of Award* proposal:

- This proposal is to conform the *Procurement Procedures Manual* to the current statutory language that exists in Tenn. Code Ann. § 12-3-514, regarding protests. The proposed changes will adapt the existing *Procurement Procedures Manual's* language to that of the statute.

Seeing no discussion on agenda item (1), Mr. Lea made a motion to recommend the *Procurement Procedures Manual of the Central Procurement Office, Section 8, Protest and Stay of Award* presented to the Procurement Commission for approval. The motion was seconded by Summer Carr, Assistant General Counsel, Department of Economic and Community Development. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (2):

(2) Central Procurement Office Policy Number 2013-008 – *Energy Efficiency Standards and Life Cycle Costing Policy and Procedures*

- This proposal is to change Central Procurement Office Policy Number 2013-008 - *Energy Efficiency Standards and Life Cycle Costing Policy and Procedures* to conform it to the existing statutory language.
- This proposal updates the policy by updating the statutory references, adding clarity to the policy by changing definitions to energy efficiency standard, which will track in the language of Tenn. Code Ann. § 12-3-902(1).
- In section 4.2, the language of Tenn. Code Ann. § 12-3-905, "All office equipment, appliances, lighting, heating, and cooling products and systems purchased by and for state agencies shall be Energy Star qualified; provided, that such Energy Star qualified products and systems are commercially available," will be added to the policy.

Seeing no discussion on agenda item (2), Mr. Chriske made a motion to recommend the Central Procurement Office Policy Number 2013-008 – *Energy Efficiency Standards and Life Cycle Costing Policy and Procedures* proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Lea. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (3):

Mr. Krivacka noted that as items (3), (4), and (5) are similar, he requested to present all of these items together to be voted on together. Mr. Perry asked if there were any objections to combining items (3), (4), and (5). There were none. Mr. Perry asked Mr. Krivacka to continue presenting item (3).

(3) Rule Exception Request ("RER") Template

Mr. Krivacka summarized the following points with regard to the Rule Exception Request ("RER") Template proposal:

- Process improvement teams have suggested changing the Rule Exception Request approval process from a manual process to one that is performed wholly within Edison.

- While all agencies and reviewer's approvals or signatures will be captured in Edison, this proposal revises the instructional text on the Rule Exception Request ("RER") to notify procurement professionals of the information that they will need to enter for the new E-Form in Edison.
- This feature is in development now, and is expected to go live in Edison on or about May 7, 2018. The revised instructions will be circulated to all procurement professionals.
- In the meantime, what is proposed is that procurement professionals continue to use the current format as it exists, which requires submission of the Rule Exception Request ("RER") to an email address.

Mr. Krivacka then proceeded to agenda item (4):

(4) *Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information*

Mr. Krivacka summarized the following points with regard to the *Procurement Procedures Manual of the Central Procurement Office, Section 11.2, General Information* proposal:

- This request is a companion to the Rule Exception Request ("RER") proposal in agenda item (3).
- The parenthetical instructions for submitting requests have been deleted as this process will be moving into Edison and it will no longer be the manual process of submitting requests through an email address.

Mr. Krivacka then proceeded to agenda item (5):

(5) *Central Procurement Office Policy Number 2015-010 – Statewide Purchasing Card Policy and Procedures*

Mr. Krivacka summarized the following point with regard to the *Central Procurement Office Policy Number 2015-010 – Statewide Purchasing Card Policy and Procedures* proposal:

- Much like the Rule Exception Request ("RER") for changes to templates in other policies of the Central Procurement Office, the Statewide Purchasing Card Policy has a corresponding policy. Currently, that process involves submitting the request to an email address. Adoption of this policy, once Edison is able to accommodate electronic requests, will move this procedure inside of Edison.

Mr. Lea stated from the implementation standpoint, timing is dependent on Edison being able to make that functionality go-live. The other variable is making sure procuring agencies have the right people with those Edison roles. Mr. Lea encouraged the Procurement Commission to be cognizant of the fact that procuring agencies need to be made aware of that go-live date of that functionality and to be sure that those in this position that historically have been signing these manually, have an approved role in Edison. Mr. Lea does not want agencies in a position where they are waiting on their Edison role approval process. Mr. Perry agreed and added that this change needs to be well communicated and include a grace period to verify that all roles are correct in Edison and the right people have that capability. Mr. Chriske asked if once this

change is recommended and presented to the Procurement Commission in April, the change would go into effect May 7th, 2018. Mr. Krivacka stated that this is correct, assuming Edison stays on track and everything is ready to go by that date. If there is an unexpected delay, Mr. Krivacka stated that he expected that there would be a delay in implementation of the proposed changes.

Seeing no further discussion, Mr. Lea made a motion to recommend combined agenda items (3) Rule Exception Request ("RER") Template, (4) *Procurement Procedures Manual of the Central Procurement Office*, Section 11.2, General Information, and (5) Central Procurement Office Policy Number 2015-010 – *Statewide Purchasing Card Policy and Procedures* proposals as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (6):

(6) Fee for Goods or Services Contract Template ("FA"), E. #. HIPPA and Section E. #. Contractor Hosted Services and Confidential Data Options

Mr. Krivacka presented the following points with regard to the Fee for Goods or Services Contract Template ("FA"), E. #. HIPPA and Section E. #. Contractor Hosted Services and Confidential Data Options proposal:

- This is more of a housekeeping item to rearrange existing language.
- The proposal is to delete the last paragraph in the instruction section of section E, HIPPA, and add this language to the end of the first paragraph in the instructions section of Section E, Contractor Hosted Services and Confidential Data Options.

Seeing no discussion, Mr. Chriske made a motion to recommend the Fee for Goods or Services Contract Template ("FA"), E. #. HIPPA and Section E. #. Contractor Hosted Services and Confidential Data Options proposal as presented to the Procurement Commission for approval. The motion was seconded by Ms. Carr. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (7):

(7) Grant Templates and Models – E #. Clean Air Act and Federal Water Pollution Control Act - NEW

Mr. Krivacka presented the following points with regard to the Grant Templates and Models – E #. Clean Air Act and Federal Water Pollution Control Act – NEW proposal:

- 2 C.F.R. § 200.326 mandates specific terms and flow-down clauses that must be included as terms in grant sub-contracts and contracts for goods and services that a grantee enters into as a condition for receiving grant funding.
- These terms are stated Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards ("Appendix II").
- These will be additional flow-down provisions that will be binding on downstream sub-grantees, grantees, and contractors of the grantees.
- This will apply to contracts and sub-grants in excess of \$150,000.

Mr. Chriske asked if this will be inserted in all grant contracts in excess of \$150,000. Mr. Krivacka clarified that it would only be inserted in those contracts that involve the Clean Air Act and Federal Water Pollution Control Act. Mr. Lea noted that the procuring agency would need to select this as an optional term. Mr. Krivacka confirmed.

Seeing no further discussion, Mr. Lea made a motion to recommend the Grant Templates and Models – E #. Clean Air Act and Federal Water Pollution Control Act – NEW proposal as presented to the Procurement Commission for approval. The motion was seconded by Mr. Chriske. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (8):

(8) Grant (“GR”) and Governmental Grant (“GG”) Templates – Section D.20, Procurement

Mr. Krivacka summarized the following point with regard to the Grant (“GR”) and Governmental Grant (“GG”) Templates – Section D.20, Procurement proposal:

- The proposal is to revise Section D.20 to include the definition of “equipment”, which comes from 2 C.F.R. § 200.33 in D.20. This change is proposed to add clarity to what is meant by the term “equipment”.

Seeing no discussion, Mr. Chriske made a motion to recommend the Grant (“GR”) and Governmental Grant (“GG”) Templates – Section D.20, Procurement proposal as presented to the Procurement Commission for approval. Ms. Carr seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (9):

(9) Grant (“GR”) and Governmental Grant (“GG”) Templates – Section D.13, Public Notice – NEW

Mr. Krivacka summarized the following points with regard to the Grant (“GR”) and Governmental Grant (“GG”) Templates – Section D.13, Public Notice - NEW proposal:

- This proposal adds optional language to replace the standard D.13, Public Notice, with this optional provision that allows state agencies to add the state agency name to the notice.
- This request is from the Tennessee Department of Mental Health and Substance Abuse Services as they would like beneficiaries of the program to be able to identify which grantor state agencies are facilitating the award to the beneficiaries. The grantor state agency would be identified in all literature, pamphlets, or materials that are published and disseminated to the public.

Mr. Lea asked if this was strictly optional. Mr. Krivacka confirmed that he was correct. Mr. Chriske stated that in other areas of the template where agencies are to insert information, that text is typically red and asked if “State Agency Name will be red in the template. Mr. Krivacka confirmed that he was correct.

Seeing no further discussion, Mr. Lea made a motion to recommend the Grant ("GR") and Governmental Grant ("GG") Templates – Section D.13, Public Notice - NEW proposal for approval. Mr. Chriske seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (10):

(10) Fee for Goods and Services Template ("FA") and No Cost Contract ("NC") for Contractors Model – Drug-Free Workplace Optional Section E - NEW

Mr. Krivacka summarized the following points with regard to the Fee for Goods and Services Template ("FA") and No Cost Contract ("NC") for Contractors Model – Drug-Free Workplace Optional Section E - NEW proposal:

- This proposal will add a Drug-Free Workplace clause as optional language in Fee for Goods and Services Template ("FA") and No Cost Contract ("NC").
- This proposal will also require the contractor to provide a Drug-Free Workplace as required by the Drug-Free Workplace Act.

Seeing no discussion, Mr. Chriske made a motion to recommend the Fee for Goods and Services Template ("FA") and No Cost Contract ("NC") for Contractors Model – Drug-Free Workplace Optional Section E – NEW proposal to the Procurement Commission for approval as presented. Ms. Carr seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (11):

Mr. Krivacka stated that the remaining items on the agenda, (11)-(18), are all proposed changes to add optional language that is hoped to reduce the number of Rule Exception Requests ("RER") that need to be approved.

(11) Grant ("GR") and Governmental Grant ("GG") Templates –Tennessee Department of Mental Health and Substance Abuse Services ("TDMHSAS") Section E. #. Title VI Compliance- NEW

Mr. Krivacka summarized the following points with regard to the Grant ("GR") and Governmental Grant ("GG") Templates - Tennessee Department of Mental Health and Substance Abuse Services ("TDMHSAS") Section E. #. Title VI Compliance - NEW proposal:

- This proposal will add Title VI Compliance as optional Section E. language for Mental Health related contracts and grant contracts.
- These clauses have historically appeared in scope of all TDMHSAS contracts. The request to include these provisions in section E. is being made to streamline all departmental grant contracts.

Mr. Lea asked if this proposal would apply to both the Tennessee Department of Mental Health and Substance Abuse Services and the Department of Education. Mr. Krivacka replied that during the sub-committee meeting, the Department of Education asked to be a part of this as well. Mr. Lea agreed that he recalled that as well and stated that this could apply to both departments. Mr. Krivacka agreed.

Mr. Chriske noted that at the bottom of the page, there is a URL that references Title VI

resources. He stated that the Comptroller's office has seen some contracts of late and even Rule Exception Requests ("RER"), that when going to the URL, the sites have changed. He continued by noting that it is good that the last part of this section states that the link may be modified from time to time, because when this language gets added to the contract, it makes everyone aware that the link may be updated. Here the language is being proposed to be put in the template. Mr. Chriske suggested that it may be appropriate to replace the hyperlink with instructional text that states something similar to "insert current URL". The benefit would be that anytime that the link did change; it would prevent having to go back and update the template language whenever there has been a change to the website link. Mr. Krivacka agreed and suggested a solution of when the option is presented to insert text, the instruction in red text can be included as Mr. Chriske suggested.

Mr. Perry stated that the motion to approve includes the request to change the text to simply reference the most current URL link as opposed to listing the link. Mr. Chriske clarified saying it would replace the link with language that says "Insert current website address".

Seeing no additional discussion, Mr. Chriske made a motion to recommend the Grant ("GR") and Governmental Grant ("GG") Templates - Tennessee Department of Mental Health and Substance Abuse Services ("TDMHSAS") Section E. #. Title VI Compliance - NEW proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor - none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (12):

(12) Grant ("GR") and Governmental Grant ("GG") Templates -TDMHSAS and Department of Education Section E. #. Kidcentraltn.com - NEW

Mr. Krivacka summarized the following points with regard to the Grant ("GR") and Governmental Grant ("GG") Templates -TDMHSAS and Department of Education Section E. #. Kidcentraltn.com - NEW proposal:

- This proposal adds Kidcentraltn.com as optional Section E. language.
- These clauses have historically appeared in the scope of all ("TDMHSAS") contracts. The proposal to include these provisions in section E. is being made to streamline all departmental grant contracts.

Mr. Perry asked if this would be similar to agenda item (11) in that Kidcentraltn.com could change in the future. Mr. Krivacka replied that if this were to change, it would come with a complete change to the program as this web address is part of the brand. In that case, it would be such a massive change that it would make sense to then come back for review.

Seeing no additional discussion, Mr. Lea made a motion to recommend the Grant ("GR") and Governmental Grant ("GG") Templates -TDMHSAS and Department of Education Section E. #. Kidcentraltn.com - NEW proposal as presented to the Procurement Commission for approval. Mr. Chriske seconded the motion. All members voted in favor - none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (13):

(13) Grant ("GR") and Governmental Grant ("GG") Templates –TDMHSAS Section E. #. Suspension of Payment - NEW

Mr. Krivacka summarized the following points with regard to the Grant ("GR") and Governmental Grant ("GG") Templates –TDMHSAS Section E. #. Suspension of Payment - NEW proposal:

- The proposal is to add an option to TDMHSAS contracts to provide for the suspension of a payment if there is a breach since many of TDMHSAS' contracts involve services and care that cannot be interrupted. This gives TDMHSAS an additional remedy short of terminating the contract in the event a grantee or service provider fails to perform and provide services to program beneficiaries.
- TDMHSAS would like to have the option for grantees to rehabilitate or receive technical assistance to ensure compliance with the terms and conditions. A suspension of payments emphasizes the importance of compliance with the terms of the contracts and provides more flexibility than terminating the contract and then later suing for damages.

Mr. Chriske asked for confirmation that this is an additional remedy and would not, in any way, weaken the State's ability to terminate for cause or convenience. Mr. Krivacka stated that he was correct.

Seeing no further discussion, Mr. Lea made a motion to recommend the Grant ("GR") and Governmental Grant ("GG") Templates –TDMHSAS Section E. #. Suspension of Payment - NEW proposal as presented to the Procurement Commission for approval. Ms. Carr seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (14):

(14) Grant ("GR") and Governmental Grant ("GG") Templates –Section D.26, Charges to Service Recipients Prohibited

Mr. Krivacka summarized the following points with regard to the Grant ("GR") and Governmental Grant ("GG") Templates –Section D.26, Charges to Service Recipients Prohibited proposal:

- Section D.26 prohibits charging program beneficiaries for services by the grantees and sub-grantees of various grant programs. TDMHSAS requested it be added to the list of other agencies so TDMHSAS does not have to request a Rule Exception Request ("RER").
- Not including TDMHSAS was simply an oversight in the first place.

Seeing no discussion, Mr. Chriske made a motion to recommend the Grant ("GR") and Governmental Grant ("GG") Templates –Section D.26, Charges to Service Recipients Prohibited proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (15):

(15) Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Code of Conduct – NEW

Mr. Krivacka summarized the following points with regard to the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Code of Conduct – NEW proposal:

- This proposal will add an optional provision requiring a Code of Conduct for TDMHSAS grantees or contractors. The Code of Conduct will require a certain code of ethics, certain standards of performance, etc., that TDMHSAS feels is necessary to ensure proper service and performance to program beneficiaries.

Mr. Lea asked if a contractor were found to be in violation of this, all remedies available to an agency including suspension or termination would remain available. Mr. Krivacka agreed, stating that the violation would be treated just as any other breach. For example, if a contractor has a code of conduct that is insufficient or doesn't meet the requirements of the contract, TDMHSAS could give notice to the grantee or the contractor and ask them to cure the defect by revising the Code of Conduct. There would be an opportunity to remedy through a request for a cure of the breach just like any other contract.

Seeing no additional discussion, Mr. Chriske made a motion to recommend the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Code of Conduct – NEW proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (16):

(16) Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Additional Subcontracting Requirements – NEW

Mr. Krivacka summarized the following points with regard to the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Additional Subcontracting Requirements – NEW proposal:

- This proposal came from TDMHSAS to add additional sub-contracting requirements as an optional Section E. language for mental health.
- This proposal will ensure that all sub-contracts between a contractor and approved sub-contractors will contain certain flow-down provisions in all of their downstream contracts.

Seeing no discussion, Mr. Lea made a motion to recommend the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Additional Subcontracting Requirements – NEW proposal as presented to the Procurement Commission for approval. Ms. Carr seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (17):

(17) Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Rule 2 Compliance – NEW

Mr. Krivacka summarized the following points with regard to the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Rule 2 Compliance – NEW proposal:

- The Rule 2 Compliance clause is required by the federal government to be included in TDMHSAS contracts that are funded with federal funds.

Seeing no discussion, Mr. Chriske made a motion to recommend the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model –TDMHSAS Section E. #. Rule 2 Compliance – NEW proposal as presented to the Procurement Commission for approval. Mr. Lea seconded the motion. All members voted in favor – none opposed.

Mr. Perry asked Mr. Krivacka to proceed to present agenda item (18):

(18) Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model – TDMHSAS Section E. #. Prohibitions on Use of Federal Substance Abuse Block Grant Funds - NEW

Mr. Krivacka summarized the following points with regard to the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model – TDMHSAS Section E. #. Prohibitions on Use of Federal Substance Abuse Block Grant Funds - NEW proposal:

- The Substance Abuse Block Grant clause is required by the federal government to be included in TDMHSAS contracts that are funded with federal Substance Abuse Prevention and Treatment Block Grant Funds.

Seeing no discussion, Mr. Lea made a motion to recommend the Fee for Goods or Services Template ("FA") and No Cost Contract ("NC") for Contractors Model – TDMHSAS Section E. #. Prohibitions on Use of Federal Substance Abuse Block Grant Funds - NEW proposal as presented to the Procurement Commission for approval. Mr. Chriske seconded the motion. All members voted in favor – none opposed.

V. Other Business: Mr. Perry asked if there was any other business to be brought before the Council and saw none.

VI. Adjournment: Seeing no other business, a motion for adjournment was made by Mr. Chriske and seconded by Mr. Lea. All members voted in favor – none opposed; whereupon the April 5, 2018 Advisory Council meeting was adjourned.

PROCUREMENT PROCEDURES
MANUAL OF THE CENTRAL
PROCUREMENT OFFICE,
SECTION 10.12, FEDERAL AWARDS
PROCUREMENT STANDARDS

NEW

REQUEST: Add the following paragraph to the *Procurement Procedures Manual of the Central Procurement Office* at §10.12 so the procurement standards of 2 C.F.R. §§ 200.317 to 200.326 are incorporated as part of CPO's Procedures Manual.

10.12. Federal Awards Procurement Standards.

To the extent applicable, any contracts that include any federal awards, all non-Federal entities receiving such awards must comply with all requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326.

**FEDERAL AWARDS PROCUREMENT
STANDARDS – OPTIONAL PURCHASE
ORDER (“PO”) AND CONFIGURATOR
TERM**

NEW

REQUEST: Add the following to the Configurator and as an optional Purchase Order term and condition so the procurement standards of 2 C.F.R. §§ 200.317 to 200.326 are incorporated as part of the purchase order or contract, when applicable.

Add the following term, "Federal Awards Procurement Standards" as appropriate.

#. Federal Awards Procurement Standards. If applicable, Contractor agrees to comply with the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards including, but not limited to the Procurement Standards at 2 C.F.R. §§ 200.317 to 200.326.

**GRANT TEMPLATES AND MODELS –
SECTION E #. CLEAN AIR ACT AND
FEDERAL WATER POLLUTION
CONTROL ACT**

NEW

REQUEST: Add the “Clean Air Act and the Federal Water Pollution Control Act” clause as optional Section E language to all grant templates and models and to the FA Template and Configurator.

Grants:

Clean Air Act and Federal Water Pollution Control Act

To the extent applicable, add the following section if the Grantee is receiving a federal award in excess of \$150,000.

- E. #. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Grantee agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to the [insert federal awarding agency] and the Region 4 Office of the Environmental Protection Agency.

FA/Configurator:

Clean Air Act and Federal Water Pollution Control Act

To the extent applicable, add the following section if the Contractor is receiving a federal award in excess of \$150,000.

- E. #. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to the [insert federal awarding agency] and the Region 4 Office of the Environmental Protection Agency.

**FEE FOR GOODS AND SERVICES
TEMPLATE (“FA”) – SECTION E #.
EQUAL OPPORTUNITY**

REDLINE VERSION

REQUEST: Revise the optional Section E Equal Opportunity provision in the FA Template and Configurator as follows:

Equal Opportunity

~~Replace the standard nondiscrimination provision with the following only if the goods or services under the Contract are paid for with federal funds. If the Contractor is a party to a federally funded contract and the Contractor enters into subcontracts, this Section must be included in the subcontracts.~~

Add the following Section only if the goods or services under the Contract are paid for with federal funds.

D.#. Equal Opportunity. ~~The Contractor agrees~~ During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
- (2) Layoff or termination;
- (3) Rates of pay or other forms of compensation; and
- (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

e-d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

**FEE FOR GOODS AND SERVICES
TEMPLATE (“FA”) – SECTION E #.
EQUAL OPPORTUNITY**

CLEAN VERSION

REQUEST: Revise the optional Section E Equal Opportunity provision in the FA Template and Configurator as follows:

Equal Opportunity

Add the following Section only if the goods or services under the Contract are paid for with federal funds.

D.#. Equal Opportunity. The Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
- (2) Layoff or termination;
- (3) Rates of pay or other forms of compensation; and
- (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

**FEE FOR GOODS AND SERVICES
TEMPLATE (“FA”) – SECTION D.32,
INSURANCE**

REDLINE VERSION

REQUEST: Revise the Configurator, Fee for Goods or Services (FA) Template at section D.32. Insurance as follows:

- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars **(\$1,000,000)** per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;

- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

Insurance Options

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "written amount Dollars (\$NUMBER AMOUNT)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;

- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

Option 2: Professional Liability Insurance

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

d. Professional Liability Insurance

- i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
 1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$1,000,000) per claim and **two million** dollars (\$2,000,000) in the aggregate; and
- iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million** (\$3,000,000) per claim and **three million** dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

Option 3: Low Risk Insurance for Independent Contractors

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by CPO, replaces the D.32. Insurance provision in its entirety. This option may only be used with the approval of the CPO Risk Manager.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and

endorsements required under this Contract. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

The insurance obligations under this Contract shall be: 1—all the insurance coverage and policy limits carried by or available to the Contractor; or 2—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds or policies in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverage(s) and policy limits.

a. Automobile Liability Insurance

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

**FEE FOR GOODS AND SERVICES
TEMPLATE (“FA”) – SECTION D.32,
INSURANCE**

CLEAN VERSION

REQUEST: Revise the Configurator, Fee for Goods or Services (FA) Template at section D.32. Insurance as follows:

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers’ compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars **(\$1,000,000)** per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;

- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

Insurance Options

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request is required to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services, employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as "written amount Dollars (\$NUMBER AMOUNT)." If additional insurance coverage is appropriate, add as new subsections and number accordingly.

Option 1: Workers' Compensation and Employer Liability Insurance – Low Risk Option

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;

- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

Option 2: Professional Liability Insurance

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

D.#.

d. Professional Liability Insurance

- i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
 - 1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$1,000,000) per claim and **two million** dollars (\$2,000,000) in the aggregate; and
- iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million** (\$3,000,000) per claim and **three million** dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

Option 3: Low Risk Insurance for Independent Contractors

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by CPO, replaces the D.32. Insurance provision in its entirety. This option may only be used with the approval of the CPO Risk Manager.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. The State reserves the right to require complete,

certified copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

The insurance obligations under this Contract shall be: 1—all the insurance coverage and policy limits carried by or available to the Contractor; or 2—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds or policies in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverage(s) and policy limits.

a. Automobile Liability Insurance

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

**FEE FOR GOODS OR SERVICES
TEMPLATE (“FA”) – SECTION E #.
STATE INSURANCE PROGRAM
OPTIONAL**

NEW

REQUEST: Add the following “State Insurance Program” as a new optional term to the Fee for Goods or Services (FA) Template:

Insurance of the State of Tennessee

Only use with prior approval of the CPO Risk Manager. This provision should only be used in the event the Contractor has requested the State’s proof of self-insurance as part of the Contract.

E.#. State Insurance Program. The State of Tennessee self-insures its exposures in general liability, automobile liability, professional malpractice, and workers’ compensation.

- a. The limits for general liability, professional malpractice, and automobile liability are three hundred thousand dollars (\$300,000) per person and one million dollars (\$1,000,000) per occurrence.
- b. The limits of liability under workers’ compensation are those set forth in Tenn. Code Ann. § 50-6-101 et seq.

Copies of the statutes that authorize actions against the State of Tennessee, establish the State’s limit of liability, and authorize self-insurance through the Risk Management Fund, are set forth in Tenn. Code Ann. § 9-8-101 et seq.

Persons wishing to file a claim for damages against the State of Tennessee arising from an act or omission of the State or its employees should file a claim with the State Treasury Department, Division of Risk Management and Claims Administration, 15th Floor, Andrew Jackson State Office Building, 502 Deaderick Street, Nashville, Tennessee 37243-0202. A copy of the State of Tennessee’s Certificate of Self-Insurance may be obtained at http://treasury.tn.gov/risk/PDFs/Certificate_of_Self_Insurance.pdf or is available upon request.