

October 9, 2017

Michael J. Wilhelm, Acting Chief
Policy and Licensing Division
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Middle Tennessee Electric Membership Cooperative
Request for Waiver
47 C.F.R. §90.179

Dear Mr. Wilhelm:

This office is counsel to the Middle Tennessee Electric Membership Cooperative (“MTEMC”). MTEMC requests a waiver of Section 90.179 of the Commission’s Rules, 47 C.F.R. §90.179, in order to enable MTEMC to utilize the statewide, public safety, 700/800 MHz radio system licensed to the State of Tennessee.¹ In support thereof, the following is shown:

MTEMC is a cooperative that is in the business of powering homes, businesses, and lives in Williamson, Wilson, Rutherford, Cannon and surrounding counties. Middle Tennessee Electric Membership Corporation distributes electricity to about 212,000 residential and business members in a four-county area directly south of metropolitan Nashville. MTEMC is a member owned, not for profit electric cooperative that was formed by farmers and homeowners in 1936.

¹ Attached hereto is a letter from the State of Tennessee, indicating the State’s consent to provide service to MTEMC, and its support for this waiver. In addition, attached hereto is a letter from the relevant 700 MHz and 800 MHz Regional Planning Committees (“RPC”), indicating their support of this waiver.

MTEMC is presently licensed in the 800 MHz band under the following call signs: WPZY846, WQAA851 and WQIF634. However, the system is past its useful life cycle, and support is no longer provided. Therefore, MTEMC sought to replace its ancient system. In doing so, MTEMC was aware of its increasing need for interoperability with area public safety providers. As a critical infrastructure service provider, MTEMC repeatedly must coordinate with public safety agencies to ensure the safe delivery of electricity, as well as proper management of emergencies (both electric and otherwise) that occur.

On this basis, MTEMC consulted with the Tennessee Advanced Communications Network (TACN) to determine whether the entities could more closely coordinate incident response, and provide at the same time spectrum and economic efficiencies. The entities reached an agreement for MTEMC to share the TACN on a non-profit, cost-shared basis.²

TACN is a P25 communications Network throughout the state of Tennessee. This system was funded through partnerships with local and state governments. TACN was developed by the State Legislature to be the single system statewide for interoperable communications. Presently there are over 30,000 users including locals, state and federal workers on the network. TACN utilizes the 700MHz Public Safety spectrum extensively throughout the state. TACN currently has 105 RF sites with the following breakdown, VHF High Band – 17; Totally 700MHz – 67; Totally 800MHz – 20; Mixed 700/800MHz – 1.

It is the desire of MTEMC to join the statewide system as MTEMC recognizes the importance for interoperability with all responders to emergencies. For example, MTEMC is very active in sending resources across the state at any given time to assist other utilities during times of natural disasters. TACN was the only major network that continued to operate as designed during the incident. MTEMC joining TACN will provide MTEMC the ability to have the interoperability with other responders and statewide coverage on the 700 and 800 MHz RF sites.

² A copy of the Agreement is attached hereto.

In addition to better coordination in incident response, and cost savings for residents of the State, another advantage of this proposed arrangement is that MTEMC (through its existing licensed 800 MHz spectrum) will be able to bring both additional capacity and additional coverage in some rural areas which are not presently well served by TACN.

Thus, the combined system represents: (1) greater incident coordination between entities increasingly dependent upon one another; (2) results in cost savings from a combined system, which benefits the citizens of Tennessee; (3) provides additional capacity for TACN, without the use of any unlicensed spectrum; and (4) provides additional coverage for TACN, which benefits first responders throughout the region.

These advantages will not jeopardize public safety communications in the region. Rather, TACN's P25 system is monitored 24/7 for performance and capacity. If necessary, the system is capable of adjusting access to ensure public safety priority. This concept is not new, as the FirstNet network will eventually provide similar capabilities.

Section 90.179 of the Commission's Rules provides that users may share radio facilities, where all users are eligible to utilize the relevant frequencies. However, the Commission has provided waivers of this rule where appropriate. For example, on two occasions the Commission has granted waivers for the State of Michigan for two different utilities.³ Similarly, the Commission has granted two waivers for the State of Ohio for different utilities.⁴

MTEMC and TACN recognize that the Commission does not typically grant waivers for non-public safety eligible entities to utilize 700 MHz public safety spectrum. However, in this particular case it is necessary, as TACN only has 700 MHz access in certain geographic areas. Therefore, consistent with the Commission's decision in

³ *State of Michigan, et. Al.*, Order, 27 FCC Rcd 214 (PSHSB 2012); *State of Michigan*, Order, DA 17-511, released May 25, 2017.

⁴ *State of Ohio and Firstenergy Corp.*, Order, DA 16-887, released August 4, 2016; *State of Ohio and Ohio Rural Electric Cooperatives, Inc.*, Order, DA 09-423, released February 23, 2009 (hereinafter *MARCS/FIRSTENERGY*).

MARCS/FIRSTENERGY, MTEMC and TACN has agree that MTEMC's use of 700 MHz spectrum is limited to the following uses:

- communications necessary and essential to respond to or restore power outages and system restoration;
- emergency notifications necessary and essential to the safety of employees and the public and to protection of property, such as line energization, imminent threats to persons or infrastructure and other hazardous conditions;
- communication relating to the energization, de-energization, or reconfiguration of electric transmission lines, distribution lines, and substations, including the coordination of these activities; and
- other uses directly related to the protection of property or safety of MTEMC employees or the general public.

MTEMC and TACN believe that they have fully satisfied the Commission's criteria for granting similar waivers in the past, and that the public interest would be served by grant of this waiver. WHEREFORE, the premises considered, it is respectfully requested that the Commission GRANT a waiver of Section 90.179 of the Commission's Rules.

Sincerely,

Alan S. Tilles, Esquire
Counsel to Middle Tennessee Electric
Membership Cooperative



Department of
**Safety &
Homeland Security**

September 11, 2017

Michael J. Wilhelm, Acting Chief
Policy and Licensing Division
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Middle Tennessee Electric Membership Cooperative
Request for Waiver
47 C.F.R. §90.179

Dear Mr. Wilhelm,

On behalf of the Tennessee Department of Safety & Homeland Security, this is to inform you that we have reviewed the attached Waiver Request of the Middle Tennessee Electric Membership Cooperative ("MTEMC") to join the Tennessee Advanced Communications Network ("TACN").

TACN has held meetings with MTEMC, and carefully planned MTEMC's participation on TACN. We believe that MTEMC's membership on TACN will significantly benefit the State. At the same time, we have taken precautions to ensure that MTEMC's use of the system will not compromise the system's capacity, nor inhibit public safety use in any way. For this reason, TACN fully supports the MTEMC request to become part of the network on both the 700 MHz and 800 MHz portions of the network.

Should you have any questions, please contact the below-signed.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Arnold Hooper".

Arnold Hooper
Director of Wireless Communications

NPSPAC Region 39 800 MHz Regional Review Committee

Jesse Griggs, Chairman
816 Tilghman St.
Kenton, TN 38233
Jgriggs158@gmail.com

John Moyers, Vice Chair
Tn Dept. of Health
710 James Robertson PKWY
Andrew Jackson Tower
Nashville, TN 37243

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Re: Middle Tennessee Electric Membership Cooperative
Request for Waiver
47 C.F.R. §90.179

Dear Mr. Wilhelm:

On behalf of the Region 39 Regional Planning Committee ("RPC"), this is to inform you that we have reviewed the attached Waiver Request of the Middle Tennessee Electric Membership Cooperative ("MTEMC") to join the Tennessee Advanced Communications Network ("TACN").

Region 39 fully supports the MTEMC request to become part of the network on both the 700 MHz and 800 MHz portions of the network. Region 39 believes that such access will greatly enhance the provision of safety services to the public in Tennessee, without compromising capacity on the TACN network. Increased interoperability between services will allow faster and more efficient delivery of life-saving services.

Should you have any questions, please contact the below-signed.

Sincerely,



Jesse Griggs
Region 39 Chair 700/800 Planning Committee (Tennessee)

**CONTRACT**

(state revenue contract with an individual, business, non-profit, or government entity of another state or country and from which the state receives monetary compensation)

Begin Date September 25, 2017	End Date 12/31/2023	Agency Tracking # 34901-00432	Edison ID 56194										
Procuring Party Legal Entity Name Middle Tennessee Electric Membership Corporation			Procuring Party Registration ID 0000001649										
Service Caption Participation in the Tennessee Advanced Communications Network (TACN)													
Ownership/Control <input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:													
Selection Method & Process Summary (mark the correct response to confirm the associated summary) <table border="1"> <tr> <td><input type="checkbox"/> RFP</td> <td>The procurement process was completed in accordance with the approved RFP document and associated regulations.</td> </tr> <tr> <td><input type="checkbox"/> Competitive Negotiation</td> <td>The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.</td> </tr> <tr> <td><input type="checkbox"/> Alternative Competitive Method</td> <td>The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.</td> </tr> <tr> <td><input type="checkbox"/> Non-Competitive Negotiation</td> <td>The non-competitive procuring party selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other</td> <td>The procuring party selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."</td> </tr> </table>				<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.	<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.	<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.	<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive procuring party selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.	<input checked="" type="checkbox"/> Other	The procuring party selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."
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Agency Contact and Telephone # Arnold Hooper, Director of Wireless Communications Tennessee Department of Safety and Homeland Security 225 Ezell Pike Arnold.Hooper@tn.gov 615-306-8548		CPO USE - RV											

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF SAFETY AND HOMELAND SECURITY
AND
MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION**

This Contract, by and between the State of Tennessee, Department of Safety and Homeland Security, hereinafter referred to as the "State" and Middle Tennessee Electric Membership Corporation, hereinafter referred to as the "Procuring Party," is for the provision of participation in the Tennessee Advanced Communications Network (TACN), as further defined in the "SCOPE OF SERVICES."

The Procuring Party is Non-Profit Corporation
Procuring Party Place of Incorporation or Organization: Tennessee

A. SCOPE OF SERVICES:

- A.1. The TACN is a P25 Standards Based system constructed by Motorola. It consists of radio communications sites utilizing the VHF High Band, 700MHz and 800MHz frequencies. Master Sites are located diversely throughout the State. Microwave links between the Master Sites and the radio sites utilize redundant methods for a Public Safety grade of service. The TACN extends throughout the State of Tennessee.
- A.2. Radio communications on the TACN will comply with regulations of the Federal Communications Commission ("FCC"), specifically applicable provisions within Part 90 (47 Code of Federal Regulations, Chapter 1 of the 10-1-98 Edition).
- A.3. The TACN will be overseen by the State's Director of Wireless Communication.
- A.4. The Procuring Party shall be authorized to participate in the TACN. The TACN has features that will enable the Procuring Party to establish restricted "talk groups" (TGs) for local events without interrupting on-going regional communications, thereby facilitating improved response by Emergency Service Entities ("ESEs") and enhancing public safety.
- A.5. The Procuring Party shall purchase all equipment necessary to provide TACN communications within the Procuring Party's service area in conjunction with the equipment already in place by the State. All such equipment shall be compatible with the TACN. (See Sections A.6., A.7., and A.10.)
- A.6. The equipment listed under this section shall fall under manufacturer's warranty for one (1) year after acceptance by the Procuring Party. The Procuring Party shall notify the State of the date of its acceptance of the equipment, in writing, no later than one (1) business day after acceptance of the equipment. After the one (1) year manufacturer's warranty has ended, upon approval of an amendment to Edison Contract #40169, the equipment will be covered under Edison Contract #40169, which provides maintenance and upgrade coverage to the following hardware:
 - a. RF and Router equipment;
 - b. Simulcast controllers and voters;
 - c. Microwave radio and associated equipment;
 - d. MOSCAD Fault Management; and
 - e. Upgrades to the MCC7500 Consoles.
- A.7. The Procuring Party shall be responsible for the following:
 - a. Any real estate, towers, and buildings owned by the Procuring Party;

- b. Maintenance to the MCC7500 Consoles and control stations, along with all subscriber radios;
- c. Fire Station and Alerting System;
- d. All RF and Microwave antennas and feed lines; and
- e. All Civil equipment such as UPS, Generators, and Tower lights.

A.8. Public Safety Priority.

- a. If, for purposes of public safety, at any time, in the discretion of the State's Director of Wireless Communications in consultation with the Procuring Party's Point of Contact ("PoC") identified in Section C.2.c., it is determined that it is necessary to adjust, restrict, or interrupt, participation in the TACN sites outside of the Procuring Party's service area by Procuring Party, the State's Director of Wireless Communications may take such actions deemed appropriate and necessary.
- b. The State's Director of Wireless Communications shall endeavor to provide reasonable advance notice to the Procuring Party prior to making any change, depending on the circumstances, and shall restore the Procuring Party's participation in the TACN sites outside of the Procuring Party's service area at the earliest opportunity.
- c. The priority of participation in the TACN shall be highest for public safety, as represented by the interests of the State, with the next highest priority for participants that are ESEs, and the following priority is for participants that are public entities such as, but not limited to, Departments of Education, Road Departments, and then Non-Governmental Agencies ("NGOs").
- d. The public safety standard for airtime availability ("the Standard") shall be adhered to, as may be defined from time to time by the State's Director of Wireless Communications to promote balanced utilization of the TACN.
- e. No user may adversely affect the total daily capacity or availability of the TACN except in emergency situations and with notification to the State's Director of Wireless Communications.

A.9. Airtime Availability and Limitations.

- a. Mutual cooperation between the Procuring Party and the State will be required so that sufficient airtime availability will be assured for all participants.
- b. The State cannot guarantee airtime due to reasons that include, but are not limited to, equipment failure or maintenance requirements.
- c. The State's Director of Wireless Communications shall make reasonable efforts to minimize any interruption and to maximize airtime availability consistent with the limitations of the TACN.
- d. The State's Director of Wireless Communications shall schedule maintenance, when feasible, during non-peak hours, and make reasonable efforts to notify the Procuring Party prior to any shutdown that may affect the Standard.

A.10. Equipment Approval.

- a. Any subscriber infrastructure equipment, as defined by the State's Director of Wireless Communications from time to time, must be approved as to TACN compatibility by the State's Director of Wireless Communications prior to being authorized for purchase.

- b. Failure to comply with Section A.2. of this Contract may result in the removal of the Procuring Party's radio(s) from having transmitting capability in the TACN.
- c. The State's Director of Wireless Communications agrees to act as an advisor to the Procuring Party for the purpose of preparing specifications for procuring infrastructure equipment to be used by the Procuring Party, and to assist in evaluating proposals received in response to solicitations.
- d. If this Contract provides for the reimbursement by the State to the Procuring Party of the cost of goods, materials, supplies, equipment, or contracted services, such procurements shall be made on a competitive basis, where practical. The State and the Procuring Party shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that the use of a competitive procurement was not practical, documentation shall include a written justification, approved by the State's Director of Wireless Communications, for such decision and non-competitive procurement.

A.11. No Warranty or Promise of Performance of the TACN.

The State does not offer any warranty of the TACN, TACN quality, reliability, or level of performance, express or implied, or make to the Procuring Party any promise that the TACN will perform as intended, desired, or specified. The Procuring Party understands and agrees to accept service and participation in the TACN subject to awareness of this limitation, and assumes all related risks.

A.12. Notice of Changes to the TACN.

The State's Director of Wireless Communications shall provide advance notice and information to the Procuring Party prior to making any major changes to the TACN that may adversely affect its operation.

A.13. TACN Maintenance.

- a. The State's Director of Wireless Communications shall have exclusive authority to provide TACN maintenance on State of Tennessee sites.
- b. The State's Director of Wireless Communications may provide TACN maintenance through direct support and/or through support agreements overseen by the State's Director of Wireless Communications, which agreements may be with partners in the TACN, State agencies, and/or private entities.

A.14. Upon completion of this Contract, the responsibility for providing maintenance, repairs and upgrades on all equipment listed under Section A.6. and A.7., shall revert back to its respective owners.

A.15. Unless otherwise agreed, the State shall not take ownership of the Procuring Party-owned equipment.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on September 25, 2017 ("Effective Date") and ending on December 31, 2023, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. In consideration of products and services provided hereunder by the State, the State shall charge and collect from the Procuring Party, the appropriate fees as specified below:

Service Description	Amount (per compensable increment)
User Fee per Radio	\$ 200.00 per radio per year

- a. Fee may be waived if radios are programmed for, and so long as radios stay programmed for, only Mutual Aid Talk Groups as those are defined and determined by the State's Director of Wireless Communications.
- b. The State must be in receipt of these fees annually, no later than July 1st of each year. Failure to pay the fees may result in cancellation of this Contract. A pro-rated portion may be acceptable depending on the date of the Procuring Party's acceptance of the equipment as noted in Section A.6. Any pro-rated portion shall be calculated based upon the number of months remaining in the state fiscal year. The Procuring Party may pay in full if agreed to by the State. If full payment is made, the other requirements of this Section regarding reports and payment audits shall still be followed. All fees will be received by the State's Fiscal Director at:

Tennessee Department of Safety and Homeland Security
Cashier's Office
1150 Foster Avenue
Nashville, TN 37243
- c. The State will provide a detailed report of all radio user fees incurred by the Procuring Party during the fiscal year such that the Procuring Party can effectively audit and reconcile all payments made under this Contract with fees processed to ensure that the State's reports match the Procuring Party's reports. This report must include the transaction number, requesting agency, services rendered, fees collected or disbursed, dates of processing, and any other information requested by the Procuring Party.
- d. All reports and invoices shall be submitted to the Procuring Party's Point of Contact (POC) at the address below, who shall act as the single Point of Contact (POC) for all issues relating to this Contract:

Brad Gibson, Chief Cooperative Business Officer
Middle Tennessee Electric Membership Corporation
555 New Salem Highway
Murfreesboro, TN 37129
E-mail Address: brad.gibson@mtemc.com
Telephone #: (615) 494-1538
- e. Payment Audit Findings. The Procuring Party agrees to make good faith efforts to resolve any findings on the basis of audits conducted in accordance with the terms of this Contract. Should any such findings be substantiated, the State agrees to adjust the following month's invoice to correct the discrepancy.
- f. Sites. The State and the Procuring Party understand that the Procuring Party may, in accordance with this Contract, add additional equipment to increase the capacity of the

network on the State's TACN sites; likewise, the State may add State-owned equipment to increase the capacity on the Procuring Party's sites. The sites are as follows:

(1) Procuring Party Sites:

- i. Short Mountain; 550 Firetower Road; Woodbury, TN;
- ii. Mt. Defiance; 1674 Smith Hollow Road; Watertown, TN;
- iii. Peytonsville; 4847 J.D. Bennett Road; Thompsons Station, TN;
- iv. Long Ridge; 9746 Bradyville Pike; Readyville, TN; and
- v. Sawyer Road; 5536 Lynwood Way; Franklin, TN.

(2) State's TACN Sites:

- i. Crane Ridge;
- ii. Franklin Road;
- iii. Tiger Hill;
- iv. Theta; and
- v. Fairview TDOT.

(3) In accordance with this Contract, the State will ensure that Edison Contract #40169 will apply to and provide for the maintenance of all sites within the TACN system, including those of the Procuring Party. Further, in accordance with this Contract, the State will ensure that Edison Contract #40169 will apply to and provide for the maintenance and upgrades of equipment as stipulated in this Contract, including equipment owned by the Procuring Party that is operating on or within the TACN system. All TACN Participants receive the same rights and benefits as the State in regards to maintenance and upgrades as stipulated in this Contract.

(4) The State agrees to provide the Procuring Party copies of any testing reports received by the State, including testing reports provided by third parties, regarding the equipment or sites owned by the Procuring Party.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least one hundred twenty (120) days before the effective date of termination. Said termination shall not be deemed a breach of contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be

determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.

Upon such termination, the Procuring Party shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).
- D.6. Conflicts of Interest. The Procuring Party warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the State or the Procuring Party on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against

the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*

- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D. 18. HIPAA Compliance. The State and Procuring Party shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").
 - a. Procuring Party warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Procuring Party warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Procuring Party will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Procuring Party in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.

- d. The Procuring Party will indemnify the State and hold it harmless for any violation by the Procuring Party or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Arnold Hooper, Wireless Communications Director
Tennessee Department of Safety and Homeland Security
225 Ezell Pike
E-mail Address: Arnold.Hooper@tn.gov
Telephone #: (615) 306-8548

The Procuring Party:

Brad Gibson, Chief Cooperative Business Officer
Middle Tennessee Electric Membership Corporation
555 New Salem Highway
Murfreesboro, TN 37129
Email Address: brad.gibson@mtmc.com
Telephone #: (615) 494-1538

with copy to:

Denise R. Miller, Esq.
Compliance and Risk Officer
Middle Tennessee Electric Membership Corporation
555 New Salem Highway
Murfreesboro, TN 37129
Email Address: denise.miller@mtmc.com
Telephone #: (615) 494-1507 (office); (615) 406-9353 (cell)

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3 Tennessee Department of Revenue Registration. The Procuring Party shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

- E.4. Debarment and Suspension. The Procuring Party certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Procuring Party shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Procuring Party's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Procuring Party of this Contract; previously possessed by the Procuring Party without written obligations to the State to protect it; acquired by the Procuring Party without written restrictions against disclosure from a third party which, to the Procuring Party's knowledge, is free to disclose the information; independently developed by the Procuring Party without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Procuring Party to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Procuring Party due to intentional or negligent actions or inactions of agents of the State or third parties. It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. State Furnished Property. The Procuring Party shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Procuring Party's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and

condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Procuring Party shall be responsible to the State for the residual value of the property at the time of loss.

IN WITNESS WHEREOF,

MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION:

 9-14-17

PROCURING PARTY SIGNATURE DATE

Thomas E Subbs Jr COO

PRINTED NAME AND TITLE OF PROCURING PARTY SIGNATORY (above)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY:

 9-14-17

DAVID W. PURKEY, COMMISSIONER DATE

Document Approval Status

SetID SHARE

Contract ID 000000000000000000056194

Supplier Middle Tennessee Electric Membership Cor

Review/Edit Approvers

Agency Approvals

Agency Approvals

Self Approved

Shoney D Naquin

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CPO Level 1 & 2 Approvals

Approved

Charles Key

Document Approval 3

09/18/17 - 1:55 PM

Comments

CPO Dir/ Chief Proc Off/ Legal

CPO Dir/ Chief Proc Off/ Legal

Approved

Christopher Salita

CPO Approval - Director

09/27/17 - 9:00 AM

Comptroller Approvals

Comptroller Approvals

Approved

Donald J Ivancic

Document Approval - Comptrolle

09/28/17 - 7:42 AM

Comments

Comptroller Special Appr

Comptroller Special Appr

Approved

Donald J Ivancic

Document Approval - Comptrolle

09/28/17 - 7:43 AM

CPO Final Contract Approval

CPO Final Contract Approval

Approved