



EAST TENNESSEE STATE
UNIVERSITY

REQUEST FOR PROPOSAL

ETSU MARTIN CENTER FOR THE ARTS BOOKING AGENCY

RFP No.	6879
Proposal Issue Date	January 5, 2023
Response Date/Time	February 7, 2023 at 2:00pm EST

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1 INTRODUCTION

1.1 Background

East Tennessee State University is located in Johnson City, Tennessee. Comprised of 11 colleges and schools, including 140 academic programs, ETSU offers degrees in arts and sciences, business and technology, education and health sciences, including numerous honors and enrichment opportunities for undergraduates and graduates. The ETSU campus consists of a 350-acre main campus and a 31-acre Medical College that is located on the Veterans Administration campus. ETSU also has over 20 remote sites that include Distance Education Centers and Medical Clinics.

Currently, ETSU's enrollment surpasses 14,000 students, taught and served by more than 2,600 faculty and staff.

For additional information, please visit the ETSU web site at www.etsu.edu and the ETSU Martin Center for the Arts website is www.etsumartincenter.org.

1.2 Statement of Procurement Purpose

East Tennessee State University (ETSU), hereinafter Institution, has issued this Request for Proposal (RFP) to define the Institution's minimum service requirements; solicit proposals; detail proposal requirements; and, outline the Institution's process for evaluating proposals and selecting a contractor to provide the requested goods and/or goods and/or services.

Through this RFP, Institution seeks to procure necessary goods and/or services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are small, minority, women, and service-disabled veteran owned, the opportunity to do business with the Institution. Vendors must complete the Ownership Ethnicity Form (See Attachment 6.1 for form and classification definitions). In addition, all small, minority, women and service-disabled veteran owned businesses are strongly encouraged to register with the Governor's Office of Diversity Business Enterprise (Go-DBE) to attain official certification. The Institution shall work with the successful Proposer and the Go-DBE Office regarding registration/certification.

The Institution intends to secure a contract to provide booking agency services for the ETSU Martin Center for the Arts. This vendor will book all non-University live entertainment performances (including, without limitation, musical and comedy touring performances and touring Broadway presentations) for which tickets are sold or otherwise made available to the public on behalf of and as agent for the Martin Center for the Arts.

See Attachment 6.4 for additional information and requirements.

1.3 Scope of Service, Contract Period, and Required Terms and Conditions

The RFP Attachment 6.2, *Pro Forma* Contract details what the Institution requires:

- Scope of Goods and/or services and Deliverables in Section A;
- Contract Period in Section B;
- Payment Terms in Section C;
- Terms and Conditions in Section D; and,
- Special Terms and Conditions in Section E

The *Pro Forma* Contract substantially represents the contract document that the successful Proposer selected by the Institution MUST agree to and sign. A Proposal that limits or changes any of the terms or conditions contained in the Pro Forma Contract may be considered non-responsive.

1.4 Coverage and Participation

It is acknowledged that East Tennessee State University is issuing this proposal, with the option for other institutions within the System, the University of Tennessee System of Higher Education and the State of Tennessee Departments to utilize the resulting Contract. A listing of these institutions is provided in Attachment 6.8. After the initial term of the resulting Contract, and each year of the Contract thereafter, the Institution reserves the right to re-negotiate more favorable terms/pricing if more institutions provided in Attachment 6.8 choose to join the resulting Contract.

1.5 Nondiscrimination

The Contractor shall abide by all applicable federal and state laws pertaining to discrimination and hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of classifications protected by Federal or State law. Accordingly, the Contractor shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

The Institution has designated the following to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and applicable federal regulations.

Vice President for Equity & Diversity
1276 Gilbreath Dr.
Johnson City, TN 37614
423.439.4445

1.6 Assistance to Proposers with a Disability

A Proposer with a handicap or disability may receive accommodation relating to the communication of this RFP and participation in this RFP process. A Proposer may contact the RFP Coordinator to request reasonable accommodation no later than the Disability Accommodation Request Deadline in the RFP Section 2, Schedule of Events.

1.7 RFP Communications

1.7.1 Unauthorized contact regarding this RFP with employees or officials of the Institution other than the RFP Coordinator named below may result in disqualification from this procurement process.

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

Katie Zink
East Tennessee State University
1276 Gilbreath Dr.
Burgin Dossett Hall, B-16
Johnson City, TN 37614
423.439.6890
littlekm@etsu.edu

1.7.2 The Institution has assigned the following RFP identification number that must be referenced in all communications regarding the RFP:

RFP 6879

1.7.3 Any oral communication shall be considered unofficial and non-binding with regard to this RFP. Only the Institution's official, responses and communications, as defined in Section 1.7.7 below, shall be considered binding with regard to this RFP. The Institution's official responses and other official communications pursuant to this RFP shall constitute an amendment of this RFP.

1.7.4 The RFP Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline in the RFP Section 2, Schedule of Events.

1.7.5 Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the Institution. The Institution assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or digital "postmarking" of a communication or proposal to the Institution by the specified deadline date shall not substitute for actual receipt of a communication or proposal by the Institution.

- 1.7.6** The Institution reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification.
- 1.7.7** The Institution will convey all official responses and communications and reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this RFP. Such communication may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the Institution. For Internet posting, please refer to the following website: <https://www.etsu.edu/bf/purchasing.php>
- 1.7.8** Any data or factual information provided by the Institution (in this RFP, an RFP Amendment or any other communication relating to this RFP) is for informational purposes only. The Institution will make reasonable efforts to ensure the accuracy of such data or information; however, it is the Proposer's obligation to independently verify any data or information provided by the Institution.

1.8 Notice of Intent to Propose

Each potential Proposer should submit a Notice of Intent to Propose to the RFP Coordinator by the deadline in the RFP Section 2, Schedule of Events. The notice should include:

- Proposer's name
- name and title of a contact person
- address, telephone number, facsimile number, and email address of the contact person

NOTICE: A Notice of Intent to Propose creates no obligation and is not a prerequisite for making a proposal, however, it is necessary to ensure receipt of RFP amendments and other communications regarding the RFP (refer to RFP Sections 1.7, *et seq.*, above).

1.9 Proposal Deadline

Proposals must be submitted no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. A proposal must respond to the written RFP and any RFP exhibits, attachments, or amendments. A late proposal shall not be accepted, and a Proposer's failure to submit a proposal before the deadline shall cause the proposal to be disqualified. It is the responsibility of the Proposer to ascertain any additional requirements with respect to packaging and delivery to the Institution. Proposers should be mindful of any potential delays whether foreseeable or unforeseeable.

1.10 Written Questions/Answer Period

A question and answer period deadline is defined in the RFP Section 2, Schedule of Events. The purpose of the written question/answer period is to allow Proposers to submit any questions they may have regarding the scope of goods and/or services requested. To ensure accurate, consistent responses to all known potential Proposers, the official response to questions will be issued by the Institution as described in RFP Sections 1.7, *et seq.*, above and on the date in the RFP Section 2, Schedule of Events.

2 RFP SCHEDULE OF EVENTS

The following Schedule of Events represents the Institution's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., EST.

RFP SCHEDULE OF EVENTS		
NOTICE: The Institution reserves the right, at its sole discretion, to adjust this schedule, as it deems necessary. The Institution will communicate any adjustment to the Schedule of Events to the potential Proposers from whom the Institution has received a Notice of Intent to Propose.		
EVENT	TIME	DATE <small>(all dates are Institution business days)</small>
1. Institution Issues RFP		January 5, 2023
2. Disability Accommodation Request Deadline		January 12, 2023
3. Pre-Proposal Comments/Written Questions Deadline	2:00 PM EST	January 20, 2023
4. Institution Responds to all Comments/Questions		January 27, 2023
5. Notice of Intent to Propose		January 31, 2023
6. Proposal Deadline	2:00 PM EST	February 7, 2023
7. Institution Completes Technical Proposal Evaluations		February 14, 2023
8. Institution Opens Cost Proposals and Calculates Scores		February 15, 2023
9. Best and Final Offer Issued		February 17, 2023
10. Best and Final Offer Due	2:00 PM EST	February 22, 2023
11. Institution Issues Intent to Award Letter and Opens RFP Files for Public Inspection		February 24, 2023
12. Award of Contract		March 1, 2023
13. Contract Effective Date		March 15, 2023

3 PROPOSAL REQUIREMENTS

Each Proposer must submit a proposal in response to this RFP with the most favorable terms that the Proposer can offer. The Institution reserves the right to further clarify and request amended proposals and/or to negotiate with the best evaluated Proposer subsequent to award recommendation but prior to contract execution if deemed necessary by Institution. Any amendment or negotiation shall be within the scope of the original procurement. Institution may initiate negotiations which serve to alter the bid/proposal in a way favorable to the Institution. For example, prices may be reduced, time requirements may be revised, etc. In no event shall negotiations increase the cost or amend the proposal such that the apparent successful Proposer no longer offers the best proposal.

3.1 Proposal Form and Delivery

3.1.1 Each response to this RFP must consist of a Technical Proposal and a Cost Proposal (as described below).

3.1.2 Each Proposer must submit six (6) original, (with original signature), one (1) *electronic, and six (6) copies of the Technical Proposal to the Institution in a sealed package that is clearly marked:

“Technical Proposal in Response to RFP 6879 - Do Not Open”

*electronic copy must be submitted on a flash drive with the Technical Proposal submission in a Word document.

3.1.3 Each Proposer must submit one (1) original (with original signature), and one (1) electronic* copy of the Cost Proposal to the Institution in a separate, sealed package that is clearly marked:

“Cost Proposal in Response to RFP 6879-- Do Not Open”

*electronic copy must be submitted on a flash drive with the Cost Proposal submission in the format it was provided to the Proposer by the Institution (i.e. Word or Excel).

3.1.4 If a Proposer encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Proposer must clearly mark the outermost package:

“Contains Separately Sealed Technical and Cost Proposals for RFP 6879”

3.1.5 The Institution must receive all proposals in response to this RFP, at the following address, no later than the Proposal Deadline time and date in the RFP Section 2, Schedule of Events. Late proposals will not be considered and will remain unopened and filed in the RFP file.

East Tennessee State University
Procurement Office, Burgin Dossett Hall, B-16
1276 Gilbreath Dr.
Johnson City, TN 37614

3.1.6 A proposal must be typewritten or hand-written in ink. A Proposer may not deliver a proposal orally or solely by means of electronic transmission.

3.2 Technical Proposal

3.2.1 The RFP Attachment 6.5, Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this RFP. This guide includes mandatory and general requirements as well as technical queries requiring a written response.

NOTICE: NO COST OR PRICING INFORMATION SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL. THIS INCLUDES REFERENCES TO ITEMS THAT ARE INCLUDED “FREE” OR “AT NO ADDITIONAL COST”, ETC. INCLUSION OF COST OR PRICING INFORMATION IN THE TECHNICAL PROPOSAL MAY MAKE THE PROPOSAL NON-RESPONSIVE, AND THE INSTITUTION MAY REJECT IT, AT ITS SOLE DISCRETION.

3.2.2 Each Proposer must use the Technical Proposal and Evaluation Guide to organize, reference, and draft the Technical Proposal. Each Proposer must duplicate the Technical Proposal and Evaluation Guide and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate). The order of the response to the Technical Proposal and Evaluation Guide must be preserved.

- 3.2.3** Each proposal should be concisely prepared, with emphasis on completeness and clarity of content. A proposal, as well as any reference material presented, must be written in English on standard 8 1/2" x 11" paper (although foldouts containing charts, spreadsheets, and oversize exhibits are permissible). All proposal pages must be numbered.
- 3.2.4** All information included in a Technical Proposal should be relevant to a specific requirement detailed in the Technical Proposal and Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will in no way contribute to the evaluation process.
- 3.2.5** The Institution may, at its sole discretion, determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference sections of the Technical Proposal as required by this RFP and the Technical Proposal and Evaluation Guide (**including using Attachment 6.5 as a table of contents as specified in 3.2.2 hereof**);
- 3.2.6** The Institution may at its sole discretion, determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in the Technical Proposal and Evaluation Guide
- 3.2.7** **The Proposer must sign and date the Technical Proposal. Digital, electronic, or facsimile signatures will not be acceptable as the original signature. Failure to submit one (1) original with an original signature will be cause for rejection of the proposal.**
- 3.2.8** In the event of a discrepancy between the original Technical Proposal and the digital copy, the original, signed document will take precedence.
- 3.3 Cost Proposal**
- 3.3.1** The Cost Proposal must be submitted to the Institution in a sealed package separate from the Technical proposal.
- 3.3.2** The Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.6, Cost Proposal and Scoring Guide.
- 3.3.3** Each Proposer shall ONLY record the proposed cost exactly as required by the Cost Proposal and Evaluation Guide and shall NOT record any other rates, amounts, or information. See Section C.4 of Attachment 6.4 for instruction on providing additional/optional cost rates.
- 3.3.4** The proposed cost shall incorporate all costs for goods and/or goods and/or services under the Contract for the total contract period.
- 3.3.5** **The Proposer must sign and date the Cost Proposal. Digital, electronic, or facsimile signatures will not be acceptable as the original signature. Failure to submit one (1) original with an original signature will be cause for rejection of the proposal.**
- 3.3.6** In the event of a discrepancy between the original Cost Proposal and the digital copy, the original, signed document will take precedence.
- 3.3.7** If a Proposer fails to submit a Cost Proposal as required, the Institution shall determine the proposal to be non-responsive and reject it.

4 GENERAL REQUIREMENTS & CONTRACTING INFORMATION

4.1 Proposer Required Review and Waiver of Objections

Each Proposer must carefully review this RFP and all attachments, including but not limited to defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). All such Comments must be made in writing and received by the Institution no later than the Written Comments Deadline in the RFP Section 2, Schedule of Events. This will allow issuance of any necessary amendments and help prevent the necessity of cancelling the RFP.

Any proposed alternatives, revisions or additions to the Pro Forma Contract (Attachment 6.2) must be made in writing. **Should the Proposer fail to include proposed alternatives, revisions or additions to the Pro Forma by the Written Comments deadline and/or in its Technical Proposal Response, such alternatives, revisions or additions will not be considered.** A proposal that limits or changes any of the terms or conditions contained in the Pro Forma Contract may be considered non-responsive.

4.2 RFP Amendment and Cancellation

The Institution reserves the unilateral right to amend this RFP at any time. If an RFP amendment is issued, the Institution will communicate such amendment to the potential Proposers. Each proposal submitted must in response to the final written RFP and any exhibits, attachments, and amendments.

The Institution reserves the right, at its sole discretion, to cancel and reissue this RFP or to cancel this RFP in its entirety in accordance with applicable laws and regulations.

4.3 Proposal Prohibitions and Right of Rejection

- 4.3.1 The Institution reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.
- 4.3.2 Each proposal must comply with all of the terms of this RFP and all applicable state laws and regulations. The Institution may consider any proposal that does not comply with all of the terms, conditions, and requirements of this RFP to be non-responsive and reject it.
- 4.3.3 A Proposer may submit an alternate proposal; however, Proposer must submit a proposal that offers the goods and/or services requested by this RFP.
- 4.3.4 A Proposer may not restrict the rights of the Institution or otherwise qualify a proposal. The Institution may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected.
- 4.3.5 A Proposer shall not submit more than one proposal that offers the goods and/or services requested by this RFP. Submitting more than one proposal shall result in the disqualification of the Proposer unless specifically provided for in this RFP.
- 4.3.6 A Proposer shall not submit multiple proposals in different capacities. This prohibited action shall be defined as a Proposer submitting one proposal as a prime contractor and a second Proposer submitting a proposal with the first Proposer offered as a subcontractor. This restriction does not prohibit different Proposers from offering the same subcontractor as a part of their proposals, provided that the subcontractor does not also submit a proposal as a prime contractor. Submitting multiple proposals in different capacities may result in the disqualification of all Proposers knowingly involved.
- 4.3.7 The Institution shall reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Proposer. Regardless of the time of detection, the Institution shall consider any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.
- 4.3.8 The Institution shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:
 - 4.3.8.1 An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - 4.3.8.2 A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

- 4.3.8.3** A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 4.3.9** The Institution reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this RFP. If the Institution waives minor variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with the RFP.
- 4.4** **Incorrect Proposal Information**
- If the Institution determines that a Proposer has provided, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive and shall be rejected.
- 4.5** **Proposal of Additional Goods and/or services**
- If a proposer offers related goods and/or services in addition to those required by and described in this RFP, the additional goods and/or services may be added to the Contract before contract signing at the sole discretion of the Institution. Proposers must provide a detailed description of each related product and/or service offered in addition to those specified in this RFP to be considered for inclusion in the contract as a separate attachment. Costs associated with additional related goods and/or services must be provided on a separate attachment in the Cost Proposal. Please note that proposed additional goods and/or services will not be used in evaluating the proposal.
- 4.6** **Assignment & Subcontracting**
- 4.6.1** The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the Institution. The Institution reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.
- 4.6.2** If a Proposer intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.4., Section B, Qualifications & Experience Requirements, Item B.11.).
- 4.6.3** Subcontractors identified within a response to this RFP will be deemed as approved by the Institution unless the Institution expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.
- 4.6.4** After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the Institution and with the Institution's prior, written approval.
- 4.6.5** Notwithstanding any Institution approval relating to subcontracts, the Proposer who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.
- 4.7** **Right to Refuse Personnel**
- The Institution reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel, of the prime contractor or a subcontractor providing goods and/or services. The Institution will document in writing the reason(s) for any rejection of personnel.
- 4.8** **Insurance**
- Successful Proposer must provide and maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Proposer shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law. The Proposer shall deliver to the Institution a certificate of insurance no later than the effective date of the contract, with the policy listing the Institution as additional insured. If any policy providing insurance required by the contract is cancelled prior to the policy expiration date, the Proposer, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the contract or in this document of the kinds and amounts of liability insurance shall not abridge, diminish or affect the contractor's legal responsibilities for the consequences of accidents arising out of or resulting from the goods and/or goods and/or services of the successful bidder under this contract.

Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the Institution shall be in form and substance acceptable to the Institution.

4.9 Professional Licensure and Department of Revenue Registration

4.9.1 All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Proposer provides for consideration and evaluation by the Institution as a part of a response to this RFP, shall be properly licensed to render such opinions.

4.9.2 Before the Contract resulting from this RFP is signed, the apparent successful Proposer (and Proposer's employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods and/or goods and/or services as required by the contract. The Institution may require any Proposer to submit evidence of proper licensure.

4.9.3 Before the Contract is signed, the apparent successful Proposer must be registered with or exempted by the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The Institution shall not award a contract unless the Proposer provides proof of such registration or documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirements, Proposer should visit <https://apps.tn.gov/bizreg/>.

4.10 Financial Stability

The successful Proposer will be required to provide information to ETSU to demonstrate financial stability and capability prior to award of contract. These requirements are located in Attachment 6.4 of this RFP.

4.12 Proposal Withdrawal

A Proposer may withdraw a submitted proposal at any time up to the Proposal Deadline time and date in the RFP Section 2, Schedule of Events. To do so, a Proposer must submit a written request, signed by a Proposer's authorized representative to withdraw a proposal. After withdrawing a previously submitted proposal, a Proposer may submit another proposal at any time up to the Proposal Deadline.

4.13 Proposal Errors and Amendments

At the option of the Institution, a Proposer may be bound by all proposal errors or omissions. A Proposer will not be allowed to alter or amend proposal documents after the Proposal Deadline time and date in the RFP Section 2, Schedule of Events unless formally requested, in writing, by the Institution.

4.14 Proposal Preparation Costs

The Proposer is responsible for all costs associated with the preparation, submittal, or presentation of any proposal.

4.15 Continued Validity of Proposals

Proposals shall state that the offer contained therein is valid for a minimum of one hundred twenty (120) days from the date of opening. This assures that Proposers' offers are valid for a period of time sufficient for thorough consideration. Proposals which do not so state will be presumed valid for one hundred twenty (120) days from the date of the Cost Proposal opening.

4.16 Disclosure of Proposal Contents

4.16.1 Each proposal and all materials submitted to the Institution in response to this RFP shall become the property of the Institution. Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost information, shall be held in confidence during the evaluation process.

- 4.16.2** Upon the completion of the evaluation of proposals, indicated by public release of a Letter of Intent to Award, the proposals and associated materials shall be open for review by the public in accordance with Tennessee Code Annotated, Section 10-7-504. By submitting a proposal, the Proposer acknowledges and accepts that the proposal contents and associated documents shall become open to public inspection in accordance with said statute.
- 4.16.3** If an RFP is re-advertised, all prior offers and/or proposals shall remain closed to inspection by the Proposers and/or public until evaluation of the responses to the re-advertisement is complete.
- 4.17** **Contract Approval**
- The RFP and the successful proposer selection processes do not obligate the Institution and do not create rights, interests, or claims of entitlement by either the Proposer with the apparent best-evaluated proposal or any other Proposer. Contract award and Institution obligations pursuant thereto shall commence only after the contract is signed by the Contractor and all other Institution/State officials as required by state laws and regulations.
- 4.18** **Contractor Performance**
- The Contractor will be responsible for the delivery of all acceptable goods or the satisfactory completion of all goods and/or services set out in this RFP (including attachments) as may be amended. All goods and/or services are subject to inspection and evaluation by the Institution. The Institution will employ all reasonable means to ensure that goods delivered and/or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.
- 4.19** **Contract Amendment**
- After contract award, the Institution may request the Contractor to deliver additional goods and/or perform additional services within the general scope of the contract and this RFP, but beyond the specified scope of service, and for which the Contractor may be compensated. In such instances, the Institution will provide the Contractor a written description of the additional goods and/or services. The Contractor must respond to the Institution with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the Institution and the Contractor reach an agreement regarding the goods and/or services and associated compensation, such agreement must be affected by means of a contract amendment. Further, any such amendment requiring additional goods and/or services must be signed by both the Institution and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render services until the Institution has issued a written contract amendment with all required approvals.
- 4.20** **Severability**
- If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the Institution and Proposers will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.
- 4.21** **Next Ranked Proposer**
- The Institution reserves the right to initiate negotiations with the next ranked Proposer should the Institution cease doing business with any Proposer selected via this RFP process.
- 4.22** **Contractor Registration**
- Proposers should complete the Institution's vendor registration process. When applicable, the Institution shall work with Proposers and the Governor's Office of Diversity Business Enterprise (Go-DBE) for Proposers to obtain official state certification. Although registration with the Institution is not required to make a proposal, a resulting contract from this RFP process cannot be finalized without the successful proposer being a registered vendor.
- 4.23** **Policy and Guideline Compliance**
- This proposal request and any award made hereunder are subject to the policies and guidelines of the ETSU Board of Trustees <https://www.etsu.edu/policies/university-policies-administrative-rule.php>.

4.24 Protest Procedures

Refer to the following Internet URL to obtain the Institution's bid protest procedures:
<https://www.etsu.edu/bf/purchasing.php>.

A protest shall be considered waived if the subject matter of the protest was known or should have been known to the protester before the Written Comments Deadline and the Protester did not raise the issue in a Written Comment.

4.25 Impermissible Clauses

A Proposer may not restrict the rights of the Institution or otherwise qualify a proposal. The Institution may determine such a proposal to be a non-responsive counteroffer, and the proposal may be rejected. The following is a list of the impermissible clauses:

1. Hold harmless / indemnification by the State.
2. Disclaimers of liability for incidental, exemplary or consequential damages.
3. Disclaimers of express or implied warranties.
4. Limitation on dollar amount which can be covered by the State.
5. Limitation on time within which State may bring suit.
6. No termination date.
7. Advanced deposits or payments required.
8. State shall pay any taxes associated with the contract.
9. Assessment of penalties and liquidation damages against the State.
10. Binding arbitration clause.
11. Award of attorney's fees and costs in case of breach by the State.
12. Governing law other than Tennessee; consent to jurisdiction outside Tennessee.
13. Provisions requiring payment of interest, late charges or finance charges in excess of Tennessee Prompt Pay Act.
14. Provisions requiring confidentiality and nondisclosure that violate the Tennessee Open Records Act, TCS § 10-7-101, et. Seq
15. Miscellaneous
 - A. The institution may not consent to the issuance of an injunction in the event of breach. An injunction against the State may only be issued pursuant to court order.
 - B. Travel expenses and per diem expenses may not exceed those set by ETSU Travel policy.
 - C. The risk of loss for goods in transit may not pass to the State before delivery unless the seller provides adequate insurance.
 - D. A contract may not be amended or extended if the termination date has passed. Once the contract has expired, there is no legal document remaining to either amend or extend.
 - E. The State may not be required to purchase or obtain insurance including liability insurance, performance bonds, or property insurance.
 - F. State may not be required to pay for labor not employed by the State unless the costs are covered in the contract.

4.26 A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the Institution may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.

4.27 ETSU facilities are Tobacco-Free, where all use of tobacco is restricted to private vehicles. The policy can be found at <https://www.etsu.edu/tobaccofree/policy.php>.

4.28 All vehicles on ETSU property must comply with the University Parking and Traffic Regulations that are found at <http://www.etsu.edu/fa/fs/parking>. A temporary parking pass can be obtained online at this link also. A campus map is found at <https://www.etsu.edu/ehome/maps/>

4.29 The successful Proposer is responsible for any damages to ETSU property and is responsible at the contractor's expense for the repair of such damages. This includes damages to sidewalks, curbs, and landscape areas.

5 PROPOSAL EVALUATION & CONTRACT AWARD

5.1 Evaluation Categories and Maximum Points

The Institution will consider qualifications and experience, technical approach, and cost in the evaluation of proposals and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each Proposal deemed by the Institution to be responsive.

CATEGORY	MAXIMUM POINTS POSSIBLE
Mandatory Requirements – Section 6.5 A	Pass / Fail
Qualifications and Experience	70
Technical Requirements	25
Cost Proposal	35

(COST MUST BE AT LEAST 25%)

5.2 Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Proposer offering the lowest cost, but rather to the responsive and responsible Proposer deemed by the Institution to offer the best combination of attributes based upon the evaluation criteria.

“Responsive Proposer” is defined as a Proposer that has submitted a response that conforms in all material respects to the RFP. “Responsible Proposer” is defined as a Proposer that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

5.2.1 Technical Response Evaluation

The RFP Coordinator will use the RFP Attachment 6.5, Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation and maintain evaluation records.

5.2.1.1 The RFP Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to RFP Attachment 6.5, Technical Proposal and Evaluation Guide, Section A). If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the Chief Procurement Officer will review the proposal and document his/her determination of whether: (1) the proposal meets requirements for further evaluation; (2) the Institution will request clarifications; or (3) the Institution will determine the proposal to be non-responsive to the RFP and reject it. A determination that a proposal is non-responsive must be approved by the Chief Business Officer before notice may be sent out that the proposal has been rejected.

5.2.1.2 A Proposal Evaluation Team, appropriate to the scope and nature of the RFP, and consisting of three (3) or more Institution employees, will evaluate each Technical Proposal that appears responsive to the RFP.

5.2.1.3 Each Proposal Evaluation Team member will independently evaluate each Technical Proposal against the evaluation criteria, rather than against other proposals, and will score each in accordance with the RFP Attachment 6.5, Technical Proposal and Evaluation Guide.

5.2.1.4 The Institution reserves the right, at its sole discretion, to request Proposer's clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by the Institution. The Proposer shall submit its resulting clarification to the Institution in the format specified in the clarification request.

5.2.2 Cost Proposal Evaluation

After the Technical Proposal evaluation has been completed, the RFP Coordinator will open the Cost Proposals and use the RFP Attachment 6.6, Cost Proposal and Scoring Guide to calculate and document the Cost Proposal scores.

5.2.3 Total Proposal Score

The RFP Coordinator will calculate the sum of the Technical Proposal scores, and the Cost Proposal scores and record the resulting number as the total score for the subject Proposal. (Refer to RFP Attachment 6.7., Score Summary Matrix).

5.3 Contract Award Process

5.3.1 The RFP Coordinator will forward the results of the proposal evaluation process to the appropriate institution official who will consider the proposal evaluation process results and all pertinent information available to make a determination about the contract award. The Institution reserves the right to make an award without further discussion of any proposal.

Notwithstanding the foregoing, to affect a contract award to a Proposer other than the one receiving the highest evaluation score, the requesting department/party must provide written justification for such an award and obtain the written approval of the appropriate institutional official.

5.3.2 After the appropriate official's determination, the Institution will issue an Intent to Award to identify the apparent best-evaluated proposal as specified in RFP Section 2, Schedule of Events.

NOTICE: The Intent to Award shall not create rights, interests, or claims of entitlement in either the Proposer with apparent best-evaluated proposal or any other Proposer.

5.3.3 The Institution will make the RFP files available for public inspection as in the RFP Section 2, Schedule of Events following issuance of the Intent to Award.

5.3.4 The Proposer with the apparent best-evaluated proposal must agree to and sign a contract with the Institution that shall be substantially the same as the RFP Attachment 6.2, Pro Forma Contract.

Prior to contract execution, the Institution reserves the right, at its sole discretion, to add terms and conditions or to revise Pro Forma Contract requirements in the Institution's best interests. No such terms and conditions or revision of contract requirements shall materially affect the basis of proposal evaluations or negatively impact the competitive nature of the RFP process.

5.3.5 The Proposer with the apparent best-evaluated proposal must sign and return the Contract no later than the Award of Contract Date in the RFP Section 2, Schedule of Events. If the Proposer fails to provide the signed Contract by the deadline, the Institution may determine that the Proposer is non-responsive to the RFP terms and reject the proposal.

5.3.6 If the Institution determines that the apparent best-evaluated proposal is non-responsive and rejects the proposal, the RFP Coordinator will re-calculate scores for each responsive Cost Proposal to determine the new, apparent best-evaluated proposal.

5.4 Service and Software Accessibility Requirements

All Informational Material and Technology (IMT) developed, purchased, upgraded or renewed by or for the use of East Tennessee State University (ETSU) will comply with all applicable ETSU policies, Federal and State laws and regulations including but not limited to the accessibility guidelines set forth in Web Content Accessibility Guidelines 2.0 A & AA, EPub3 Accessibility guidelines, Section 508 and all other regulations promulgated under Section 504 of the Rehabilitation Act and Title II of The Americans with Disabilities Act as amended. Further:

- a. Compliance means that a person with a disability can acquire the same information, engage in the same interactions, and enjoy the same goods and/or services as a person without a disability, in an equally effective and integrated manner, with substantially equivalent ease of use.
- b. The Successful Proposer warrants that any IMT purchased by, developed, upgraded or renewed for the Institution will comply with the aforementioned accessibility guidelines and the Successful Proposer will provide accessibility testing results, written documentation verifying accessibility including the most recent VPAT for the product/service identified in this document.

- c. The Successful Proposer will promptly respond to and resolve accessibility issues/complaints, and to indemnify and hold the Institution harmless in the event of claims arising from inaccessibility of the contractor's/vendor's product(s) or service(s).
- d. Proposer shall provide access to the Institution as needed for testing/compliance review.

Additional information can be found in Attachment 6.11, Vendor Product Accessibility Statement and Documentation.

If Proposer is not compliant at this time with these standards, Proposer shall describe in response to Section C.2.2 below, via the Accessibility Conformance and Remediation Form (Attachment 6.12) its plan for remediation.

1. Proposer must validate that it has implemented and maintains 'appropriate safeguards,' as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all 'customer information,' as that term is defined in § 314.2(b) of the FTC Safeguard Rule, delivered to Proposer by Institution pursuant to this Agreement. Proposer must validate that it has implemented an Information Security Program ('the Program') as required by the FTC Safeguard Rule.
2. Proposer shall validate in its response its understanding that Proposer shall have a retention and disposal policy of system data.
3. Proposer shall validate in its response its understanding that Proposer shall utilize a data recover/backup system.

East Tennessee State University HIGHER EDUCATION SYSTEM Ownership Ethnicity Form

In order to comply with reporting regulations required by the State of Tennessee and the United States federal income tax laws, it is necessary that the following information be provided prior to the issuance of any contract.

<p>1. Name of Contractor: _____</p> <p>Federal ID / Social Security Number: _____</p>	<p>2. Is Contractor a US citizen?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If no, state country of citizenship: _____</p> <p>(If not a US Citizen, please include a copy of Visa with this form.)</p>
<p>3. Kind of Ownership (Check one):</p> <p><input type="checkbox"/> Govt. (GO) <input type="checkbox"/> Agency of the State of Tennessee (SA) <input type="checkbox"/> Non-Profit (NO) <input type="checkbox"/> Majority (MJ) <input type="checkbox"/> Minority* (see the following for definition) <input type="checkbox"/> Woman (WO)** (see the following for definition) <input type="checkbox"/> Small (SM)*** (see the following for definition) <input type="checkbox"/> Service-Disabled Veteran****(see the following for definition)</p>	<p>4. Minority / Ethnicity Code (Check One):</p> <p><input type="checkbox"/> African American (MA) <input type="checkbox"/> Native American (MN) <input type="checkbox"/> Hispanic American (MH) <input type="checkbox"/> Asian American (MS) <input type="checkbox"/> Other Minority (MO)</p> <p>Specify: _____</p>
<p>5. Preference for reporting purposes: (Note: If Contractor qualifies in multiple categories as small, woman-owned and/or minority, Contractor is to specify in which category he / she is to be considered for reporting and classification purposes.)</p> <p><input type="checkbox"/> Small <input type="checkbox"/> Minority <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Service-Disabled Veteran</p>	
<p>6. Certification: I certify that all the information as completed above is accurate and true.</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="display: flex; justify-content: space-between;"> Signature Date </p> <p>Name (Printed): _____</p> <p>Title: _____</p>	

***Minority Ownership Clarification:**

"Minority owned business" means a business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

- a) African American (a person having origins in any of the black racial groups of Africa);
- b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- c) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
- d) Native American (a person having origins in any of the original peoples of North America).

****Woman-Owned Business Clarification:**

A "woman-owned business" means a woman owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.

*****Small Business Ownership Clarification:**

A "small business" means a business that is independently owned and operated for profit, is not dominant in its field of operation and is not an affiliate or subsidiary of a business dominant in its field of operation.

The Governor's Office of Diversity Business Enterprise establishes small business guidelines on industry size standards. The criteria guidelines are required to be met in order for a business to be considered small. The annual receipts or number of employees indicates the maximum allowed for a small business concern and its affiliates to be considered small.

******Service-Disabled Veteran Business Enterprise (SDVBE) Clarification**

Tennessee Service-Disabled Veteran owned mean any person who served honorably on active duty in the Armed Forces of the United States with at least a twenty percent (20%) disability that is service-connected meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service. "Tennessee service disabled veteran owned business" means a service-disabled veteran owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function.

Tennessee Service-Disabled Veteran owned means a service-disabled owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function, and

- 1. is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled owned veterans;
- 2. In the case of a business solely owned by (1) service-disabled veteran and such person's spouse, is at least fifty percent (50) owned and controlled by the service-disabled veteran; or
- 3. In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veteran and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

TYPE OF BUSINESS	ANNUAL GROSS SALES	NO. OF EMPLOYEES
Agriculture, Forestry, Fishing	\$500,000	9
Architectural / Design / Engineering	\$2,000,000	30
Construction	\$2,000,000	30
Educational	\$1,000,000	9
Finance, Insurance & Real Estate	\$1,000,000	9
Information Systems / Technology	\$2,000,000	30
Manufacturing	\$2,000,000	99
Marketing / Communications / Public Relations	\$2,000,000	30
Medical / Healthcare	\$2,000,000	30
Mining	\$1,000,000	49
Retail Trade	\$750,000	9
Service Industry	\$500,000	9
Transportation, Commerce & Utilities	\$1,000,000	9
Wholesale Trade	\$1,000,000	19

ATTACHMENT 6.2
PRO FORMA CONTRACT

The *Pro Forma* Contract set forth in this Attachment contains some “blanks”, signified in brackets by words in all capital letters, describing material to be added, along with appropriate additional information, in the final contract resulting from this RFP. **TO BE COMPLETED BY ETSU AFTER AWARD OF RFP.**

**CONTRACT
BETWEEN
EAST TENNESSEE STATE UNIVERSITY
AND
[CONTRACTOR NAME]**

This Contract is entered into this ___ day of _____, 20__ by and between EAST TENNESSEE STATE UNIVERSITY (hereinafter referred to as the “Institution”) and [CONTRACTOR LEGAL ENTITY NAME], (hereinafter referred to as the “Contractor”), is for the purpose of providing booking agency services for the ETSU Martin Center for the Arts, as further defined in the "SCOPE OF SERVICES".

The Contractor is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY] with its principal location being:

[ADDRESS]

The Contractor’s place of incorporation or organization is [STATE OF ORGANIZATION].

A. SCOPE OF SERVICES:

A.1. **THIS SCOPE OF SERVICES SHOULD BE COMPLETE WHEN THE RFP IS ISSUED:**

The institution intends to secure a contract to provide booking agency services for the ETSU Martin Center for the Arts. This vendor will book all University and non-University live entertainment performances (including, without limitation, musical and comedy touring performances and touring Broadway presentations) for which tickets are sold or otherwise made available to the public on behalf of and as agent for the Martin Center for the Arts. In addition, the vendor will provide consultation and assistance to the center for event execution, marketing, technical needs, business operations and related production.

Vendor agrees to book at least twenty (20) applicable events, at least three (3) Broadway shows and at least five (5) academic events each fiscal year for the ETSU Martin Center facility.

As an option, vendor should be able to provide booking services for the following locations and be able to provide consultation and assistance to the Center for event execution, marketing, technical needs, business operations and related production.

- William B. Greene Jr. Stadium up to 15,000 seating capacity
- Ballad Health Athletic Center (Mini Dome) up to 10,000 seating capacity
- Freedom Hall up to 6,500 seating capacity
- Brooks Gym up to 4,000 seating capacity

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on March 15, 2023 and ending on [END DATE]. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5)

years, provided that the Institution notifies the Contractor in writing of its intention to do so at least sixty (60) days prior to the Contract expiration date. An extension of the term of this Contract will be affected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be affected through an amendment to the Contract and shall be based upon rates provided for in the original Contract.

[THESE DATES SHOULD BE COMPLETE WHEN RFP IS ISSUED]

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the Institution under this Contract exceed [WRITTEN DOLLAR AMOUNT] [\$NUMBER AMOUNT]. The Service Rates in Section C.3 include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs the work.

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

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones listed below. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>[DUE DATE]</u>	<u>AMOUNT</u>
[SERVICE UNIT/MILESTONE EVENT]		[\$NUMBER AMOUNT]
[SERVICE UNIT/MILESTONE EVENT]		[\$NUMBER AMOUNT]

The Contractor shall submit monthly invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

C.4. Travel Compensation.

The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Payment of Invoice. The payment of an invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.7. Deductions. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the Institution any amounts which are or shall become due and payable to the Institution by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract, in whole or in part, without cause for any reason. Termination under this Section D. 4 shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount based upon such termination.
- D.5. Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any term of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or State constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Institution as requested.

- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The Contractor, being an independent contractor and not an employee of the Institution, agrees to carry public liability insurance, issued by a carrier licensed to do business in the State of Tennessee, in the amount of at least one million dollars per occurrence, with an endorsement naming the Institution as an additional insured under the policy, and any other forms of insurance required by law, including, but not limited to workers compensation insurance. The Contractor shall provide proof of all insurance required under this section prior to execution of this Contract. Contractor shall pay applicable taxes incident to this Contract.
- D.14. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution 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.18. Severability. If any terms or 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.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. ADDITIONAL TERMS AND CONDITIONS:

E.1. Communications and Contacts.

The Institution:

Jennifer Clements, Executive Director of the ETSU Martin Center & University Events
East Tennessee State University
1320 W. State of Franklin
Johnson City, TN 37614
423.439.5645, phone
clements@etsu.edu

The Contractor:

[NAME AND TITLE OF CONTRACTOR CONTACT PERSON]
[CONTRACTOR NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[FACSIMILE NUMBER]
[EMAIL ADDRESS]

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties.

- E.2. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Termination under this Section E.2 shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.3. Breach. A party shall be deemed to have breached the Contract if any of the following occurs (However, this list is not exclusive: failure to perform in accordance with any term or provision of the Contract; partial performance of any term or provision of the Contract; any act prohibited or restricted by the Contract; or, violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.
- (1) In event of a Breach by Contractor, the Institution shall have available the remedy of actual damages and any other remedy available at law or equity.
 - (2) Liquidated Damages—In the event of a Breach, the Institution may assess Liquidated Damages. The Institution shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as the amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages provisions contained in the above referenced, Attachment [NUMBER] and agrees that the amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the Institution in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the Institution pursuant to the indemnity provision or other section of this Contract.

The Institution may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the Institution exercises its option to declare a Partial Default, or the Institution terminates the Contract. The Institution is not obligated to assess Liquidated Damages before availing itself of any other remedy. The Institution may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or in equity; provided, however, Contractor shall receive a credit for Liquidated Damages previously withheld except in the event of a Partial Default.
 - (3) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted

service; or (2) the cost to the Institution of providing the defaulted service, whether said service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days of any request, pertinent material from Contractor. The Institution shall make the final and binding determination of the amount.

Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

- b. **Institution Breach**— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy available in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of the claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.4. **Copyrights and Patents/Institution Ownership of Work Products.** Contractor grants Institution a world-wide, perpetual, non-exclusive, irrevocable, fully paid up license to use any proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in any financial benefits derived from the commercial exploitation of all work products created, designed, developed, or derived from the services provided under this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under this Contract for internal purposes only.

The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any third party's intellectual property rights, including but not limited to, any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract.

The Contractor further agrees that it shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the obligations of the Contractor to the Institution.

- E.5. **Insurance.** The Contractor shall maintain a commercial general liability policy. The commercial general liability policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law. The Contractor shall deliver to the Institution both certificates of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

- E.6. **Competitive Procurements.** If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services, such procurements shall be made on a competitive basis, when practical.

- E.7. **Inventory/Equipment Control.**
No equipment shall be purchased under this Contract.

- E.8. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E.9. Contract Documents. Included in this Contract by reference are the following documents:
- a. This Contract document and its attachments
 - b. The Request for Proposal and its associated amendments
 - c. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.

- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.11. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person (including Institution), firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof and shall provide all assistance required by the Institution in the Institution's defense. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.12. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its 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 offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed 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.
- E.13. Prohibition on Hiring Illegal Immigrants. T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilize the service of illegal immigrants in the performance of a contract or who knowingly utilize the services of any subcontractor, if permitted under the contract, who will utilize the services of illegal immigrants in the performance of the contract. By signing this Contract, the Contractor attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of illegal immigrants in the performance of the Contract and will not knowingly utilize the services of any subcontractor, if permitted under the Contract, who will utilize the services of illegal immigrants in the performance of the Contract.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

- E.14. Red Flags and Identity Theft. The Contractor shall have policies and procedures in place to detect relevant Red Flags, as that term is defined in Federal Trade Commission regulations, that may arise in the performance of the Contractor's activities under the Contract or review the Institution's Red Flags identity theft program and report any Red Flags to Institution.
- E.15. Sales and Use Tax. The Contractor shall be registered with or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract. The Contractor shall comply, and shall require any subcontractor to comply, with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the Contractor, or the Contractor's subcontractor.
- E.16. Data Privacy and Security.
Data Privacy. "Personal Information" means information provided to Contractor by or at the direction of Institution, or to which access was provided to Contractor by or at the direction of Institution, in the course of Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers.

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information complies with all applicable international, federal and state privacy and data protection laws, including without limitation, the Gramm-Leach-Bliley Act ("GLBA"); the Health Information Portability and Accountability Act ("HIPAA"); the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C.1232g), the FTC's Red Flag Rules, as amended together with regulations promulgated thereunder .

Some Personal Information provided by Institution to Contractor is subject to FERPA. Contractor acknowledges that its improper disclosure or re-disclosure of Personal Information covered by FERPA may, under certain circumstances, result in Contractor's exclusion from eligibility to contract with Customer for at least five (5) years and agrees to become a "school official" as defined in the applicable Federal Regulations for the purposes of this Contract.

With respect to any processing of personal data of persons located in, or personal data obtained from within, the European Union (EU), Contractor certifies that it will comply with all applicable laws or regulations related to acceptance, transmission, and/or storage of such personal data as defined by and in accordance with the EU's General Data Protection Regulations ("GDPR"). Contractor will only act on the written instruction of the Institution and will assist the Institution in compliance with GDPR in relation to the security of processing, the notification of personal data breaches, data protection impact assessments, answering data subjects' requests, and allowing data subjects to exercise their rights under the GDPR. Contractor consents to audits and inspections as necessary to ensure compliance with these provisions.

Data Security. Contractor represents and warrants that Contractor will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Contractor deems necessary to maintain compliance with SSAE16.

Incident Response. "Security Incident" means any reasonably suspected breach of information security, unauthorized access to any System, server or database, or any other unauthorized access, use, or disclosure of Personal Information or Highly-Sensitive Personal Information occurring on Systems under Contractor's control. Contractor shall: (i) provide Institution with the name and contact information for an employee of Contractor who shall serve as Customer's primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Incident; (ii) notify Institution of a Security Incident as soon as practicable, but no later than forty eight (48) hours after Contractor becomes aware of it, except where

disclosure is prohibited by law; and (iii) notify Institution of any such Security Incident by telephone at the following number: Karen King: Office: 423.439.7068, and e-mail kingk@etsu.edu, with a copy by e-mail to Contractor's primary business contact at the Institution.

Contractor shall use best efforts to immediately mitigate or resolve any Security Incident, at Contractor's expense and in accordance with applicable privacy rights, laws, regulations and standards. Contractor shall reimburse Institution for actual costs incurred by Institution in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation incurred under all applicable laws as a result of the Security Incident.

Return of Personal Information. At any time during the term of this Contract, at the Institution's written request or upon the termination or expiration of this Contract, Contractor shall return to the Institution all copies, whether in written, electronic or other form or media, of Confidential, Highly-Sensitive, or Personal Information in its possession, or at Customer's direction, securely dispose of all such copies.

The Contractor shall provide and retain timely, accurate, and comprehensive information such as records and reports that allow ETSU to monitor risks. The inventory of reports should include SOC 1, SOC 2, and reports for data breaches.

- E.17. Contractor Commitment to Diversity. The Contractor shall assist the Institution in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the Institution in form and substance as required by Institution.
- E.18. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- E.19. Service and Software Accessibility Standards. The Contractor warrants and represents that the service and software, including any updates, provided to the Institution will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3 and Section 508 of the Vocational Rehabilitation Act. To the extent that the products fail to meet the WCAG 2.0 AA, EPub 3 and Section 508 standards, the Contractor will provide Institution with a fully completed Accessibility Statement and Conformance and Remediation forms (Attachments 6.10 & 6.11). The Contractor shall indemnify and hold the Institution harmless in the event of claims arising from inaccessibility related to the Contractor's product and/or services.
- E.20. Click-Wrap Agreements. The Contractor agrees that click-wrap agreements shall not be binding upon the Institution. No employee has the actual or apparent authority to enter into click-wrap agreements on behalf of the Institution without the approval of the Institution's Procurement and/or Contracts Office. No employee has the authority to modify, amend, or supplement this Contract through a click-wrap agreement. This Contract can only be modified, amended, or supplemented under these terms through a written amendment in accordance with the Institution's and ETSU's procedures, policies, and guidelines.
- E.21. Binding Contract. The Contractor fully understands that this Contract is not binding except and until all appropriate State officials' approvals and signatures have been obtained, and the fully executed document returned to the Contractor.

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

[NAME AND TITLE]

Date

EAST TENNESSEE STATE UNIVERSITY:

[NAME AND TITLE]

Date

ATTACHMENT A (Pro-Forma Contract)

CONTRACTOR RESPONSIBILITIES

THIS ATTACHMENT SHOULD CONTAIN, AT A MINIMUM, THE RFP SPECIFICATIONS WHEN THE RFP IS ISSUED.

The institution intends to secure a contract to provide booking agency services for the ETSU Martin Center for the Arts. This vendor will book all University and non-University live entertainment performances (including, without limitation, musical and comedy touring performances and touring Broadway presentations) for which tickets are sold or otherwise made available to the public on behalf of and as agent for the Martin Center for the Arts. In addition, the vendor will provide consultation and assistance to the center for event execution, marketing, technical needs, business operations and related production.

Vendor agrees to book at least twenty (20) applicable events, at least three (3) Broadway shows and at least five (5) academic events each fiscal year for the ETSU Martin Center facility.

As an option vendor should be able to provide booking services for the following locations and be able to provide consultation and assistance to the center for event execution, marketing, technical needs, business operations and related production.

- William B. Greene Jr. Stadium up to 15,000 seating capacity
- Ballad Health Athletic Center (Mini Dome) up to 10,000 seating capacity
- Freedom Hall up to 6,500 seating capacity
- Brooks Gym up to 4,000 seating capacity

ATTACHMENT B (Pro-Forma Contract)

CONTRACT RATES

Note: The final contract rates to be added upon contract award.

THIS ATTACHMENT SHOULD CONTAIN, AT A MINIMUM, THE BASE COST ITEMS REQUESTED IN THE RFP WHEN THE RFP IS ISSUED.

	Year 1	Year 2	Year 3	Year 4	Year 5
Cost Item Description					
D.1 The Proposers costs for this RFP must be addressed by line item, as follows:					

ATTACHMENT C (Pro-Forma Contract)

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

TO BE COMPLETED BY SUCCESSFUL PROPOSER AFTER AWARD OF PROPOSAL

PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Proposer must complete and sign this Technical Proposal Transmittal. It must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. If the individual is not the Proposer's chief executive, attach evidence showing the individual's authority to bind the proposing entity.

The Proposer does hereby affirm and expressly declare confirmation, certification, and assurance of the following:

1. This proposal constitutes a commitment to provide all goods and/or services as defined in the RFP Attachment 6.2, *Pro Forma* Contract, Scope of Goods and/or Services for the total contract period and confirmation that the Proposer shall comply with all of the provisions in this RFP and shall accept all terms and conditions set out in the RFP Attachment 6.2, *Pro Forma* Contract. A Proposal that limits or changes any of the terms or conditions contained in the *Pro Forma* Contract may be considered by the Institution, in its sole discretion, non-responsive and may be rejected.
2. The information detailed in the proposal submitted herewith in response to the RFP is accurate.
3. The proposal submitted herewith in response to the RFP shall remain valid for at one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
4. The Proposer shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the submission of its Proposal and, if the successful Proposer, in the performance of the Contract.
5. The Proposer shall comply with all of the provisions in the subject RFP.
6. **The Proposer ___does or ___does not agree that this proposal and current contract pricing, if requested, is available to other State of Tennessee Universities/UT Institutions, the Tennessee Board of Regents System and State of Tennessee departments for the same time period it is available to the Institution. A listing of these institutions is provided in Attachment 6.8.**
7. The Proposer certifies, by signature below and submission of this proposal, to the best of its knowledge and belief, that it and its 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 for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed 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.
8. The Proposer understands and agrees that Proposer shall be paid by ACH payment. Payment terms are Net 30. Deposits and prepayments are not allowed.
9. By submission of this Proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization under penalty of perjury, that to the best of its knowledge and belief that each Proposer is not on the list created pursuant to § 12-12-106 (Iran Divestment Act). For reference purposes, the list is currently available at:
<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/state-agencies-/statewide-contract-instruction--swc-.html>

SIGNATURE & DATE: _____

RFP REQUIREMENTS

Overview

East Tennessee State University (hereinafter Institution) is soliciting proposals from qualified proposers for the procurement of a vendor to provide booking agency services for the ETSU Martin Center for the Arts. This vendor will book all University and non-University live entertainment performances (including, without limitation, musical and comedy touring performances and touring Broadway presentations) for which tickets are sold or otherwise made available to the public on behalf of and as agent for the Martin Center for the Arts. In addition, the vendor will provide consultation and assistance to the center for event execution, marketing, technical needs, business operations and related production.

Vendor agrees to book at least twenty (20) applicable events, at least three (3) Broadway shows and at least five (5) academic events each fiscal year for the ETSU Martin Center facility.

As an option vendor should be able to provide booking services for the following locations and be able to provide consultation and assistance to the center for event execution, marketing, technical needs, business operations and related production.

- William B. Greene Jr. Stadium up to 15,000 seating capacity
- Ballad Health Athletic Center (Mini Dome) up to 10,000 seating capacity
- Freedom Hall up to 6,500 seating capacity
- Brooks Gym up to 4,000 seating capacity

The term of the Contract resulting from this Request for Proposal (RFP) shall be up to five (5) years, inclusive of any applicable renewals.

The following are requirements to respond to this Request for Proposal and should be used as a strict guideline in the preparation of a proposal. Each Proposer must use the Technical Proposal and Evaluation Guide (Attachment 6.5) to organize, reference, and draft its Technical Proposal. **Each Proposer must duplicate the Technical Proposal and Evaluation Guide and use it as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).** The order of the response to the Technical Proposal and Evaluation Guide must be preserved.

The Institution expects all Proposers to submit a complete and thorough response to the specifications identified in this RFP. In response to each specification, Proposers must clearly identify the specification to which they are responding and thoroughly explain how their solution fulfills the requirement of that specification.

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION A

SECTION A — MANDATORY REQUIREMENTS

TECHNICAL PROPOSAL & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below.

The RFP Coordinator will review the Proposal to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Chief Procurement Officer must review the Proposal and attach a written determination. A determination that a proposal is non-responsive must be approved by the Chief Business Officer before notice may be sent out that the Proposal has been rejected. In addition to the Mandatory Requirement Items, the RFP Coordinator will review each Proposal for compliance with all RFP requirements.

PROPOSER LEGAL ENTITY NAME:

- The Proposal must be delivered to the Institution no later than the Proposal Deadline specified in the RFP Section 2, Schedule of Events.
- The Technical Proposal and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., *et seq.*).
- The Technical Proposal must NOT contain cost or pricing information of any type.
- The Technical Proposal must NOT contain any restrictions of the rights of the State/Institution or other qualification of the Proposal.
- A Proposer must NOT submit alternate Proposals.
- A Proposer must NOT submit multiple Proposals in different forms (as a prime and a sub-contractor).

Proposal Page # (Proposer completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
	A.1	Provide the Proposal Transmittal and Statement of Certifications and Assurances (RFP Attachment 6.3.) completed and signed by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2	Provide a statement, based upon reasonable inquiry, of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (<i>e.g.</i> , employment by the State of Tennessee or Institution) and, if so, the nature of that conflict. NOTE: Determination of conflict of interest shall be solely within the discretion of the Institution, and the Institution reserves the right to cancel any award.	
	A.3	Provide a current bank reference indicating that the Proposer's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, on bank letterhead, signed, and dated within the past three (3) months.	
	A.4	Provide two current positive credit references from vendors with which the Proposer has done business written in the form of standard business	

		letters, on reference's letterhead, signed, and dated within the past three (3) months.	
	A.5	Provide an Ownership Ethnicity Form (Attachment 6.1).	
	A.6	Provide a copy of a current certificate of liability insurance. If Proposer's current limits/coverages do not meet the requirements of Section 4.8 above, prior to contract award, the successful Proposer will be required to submit a valid, current certificate of insurance that meets the requirements of Section 4.8.	
	A.7	Provide a statement of willingness and ability to travel to the venue on show date if deemed necessary by ETSU to assist with show day issues.	
	A.8	Provide statement of agreement to be available by cell phone and to provide number in advance of show.	
	A.9	Provide statement that Contractor can begin work immediately upon completion of a fully executed contract.	
	A.10	Provide example of the ability to secure national artists in the following genres: Rock and Roll, hip Hop, Pop/Top 40, Country, R & B, Alternative Rock, Non-Musical (Comedy, Lecture, etc.).	
	A.11	Provide example of the ability to secure Broadway Shows.	

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION B		
PROPOSER NAME:		
SECTION B — QUALIFICATIONS & EXPERIENCE		
<p>The Proposer must address ALL Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). A Proposal Evaluation Team, made up of three or more Institution employees, will independently evaluate and score the proposal’s “qualifications and experience” responses.</p>		
Proposal Page # (to be completed by Proposer)	Qualifications & Experience Items	Points Awarded
	B.1 Describe the Proposer’s form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and detail the name, mailing address, email address and telephone number of the person the Institution should contact regarding the proposal. (5 points possible)	
	B.2 Provide a statement of whether there have been any mergers, acquisitions, or sales of the Proposer’s company within the last ten years, and if so, an explanation providing relevant details. (5 points possible)	
	B.3 Provide a statement of whether the Proposer or any of the Proposer’s principals, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony, and if so, an explanation providing relevant details. (5 points possible)	
	B.4 Provide a statement of whether there is any pending litigation against the Proposer; and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair the Proposer’s performance in a contract under this RFP. (5 points possible)	
	B.5 Provide a statement of whether, in the last ten years, Proposer has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details. (5 points possible)	
	B.6 Provide a statement of whether there are any pending Securities Exchange Commission investigations involving the Proposer, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) will impair the Proposer’s performance in a contract under this RFP. (5 points possible)	
	B.7 Provide proof of the ability to secure events for performing arts centers (1200 plus seats). (5 points possible)	
	B.8 Provide proof of ability to consult and provide assistance to center regarding show execution, marketing, technical needs, business operations and related production. (5 points possible)	

	B.9	Provide proof of the ability to secure events for stadiums (10,000 plus seats). (5 points possible)	
	B.10	Indicate how long the Proposer has been providing the requested goods and/or services and include the number of years in business. (5 points possible)	
	B.11	Indicate the Proposer organization's number of employees, client base, and location of offices (list all offices in the State of Tennessee). (5 points possible)	
	B.12	Provide a narrative description of the proposed project team and its organizational structure, list its members, and include related experience. (The Institution reserves the right to approve any changes in the proposed project team). Information about each project team member shall include, but not be limited to, the following: 1. Contact Name 2. Title 3. Years with the Proposer's firm. (5 points possible)	
	B.13	Provide a statement of whether the Proposer intends to use subcontractors, and if so, the names and mailing addresses of the committed subcontractors and a description of the scope and portions of the work the subcontractors will perform. (5 points possible)	
	B.14	Provide five (5) customer references for similar projects representing both three of the larger accounts currently serviced by the vendor as well as a list, if any, of all current contracts with the Institution or other Tennessee Institutions of Higher Education and all those completed within the previous five-year period. Each reference must include: <ul style="list-style-type: none"> ▪ the company name and business address; ▪ the name, title, email address and telephone number of the company contact knowledgeable about the project work; and ▪ a brief description of the service provided and the period of service. The list of contracts with the Institution or higher education must include: <ul style="list-style-type: none"> ▪ the contract number; ▪ the contract term; and ▪ the procuring Institution or agency for each reference. <p><i>Each evaluator will generally consider the results of reference inquiries by the Institution regarding <u>all</u> references provided (both Institution and non-Institution). Current or prior contracts with the Institution are not a prerequisite and are not required for the maximum evaluation score possible, and the existence of such contracts with the Institution will not automatically result in the addition or deduction of evaluation points.</i></p> <p><i>The Institution is under <u>no</u> obligation to clarify any reference information.</i> (5 points possible)</p>	
(Maximum Section B Score = 70)			

TECHNICAL PROPOSAL & EVALUATION GUIDE — SECTION C

The Proposer must address ALL Technical Approach section items and provide, in sequence, the information and documentation as required (with the associated item references). A Proposal Evaluation Team, made up of three or more Institution employees, will independently evaluate and score the proposal's response to each item.

Technical Requirements	Points Awarded
<p>C.1 Provide a narrative of how Proposer will provide ongoing customer service and guidance throughout the entire process of booking an event (i.e. communication to advise on steps, contact to advance event and promptness of answering questions and getting information). Provide detail examples of how previous events have been handled and examples of how situations were handled when issues arose related to items requested in this RFP. (5 points possible)</p>	
<p>C.2 Provide a narrative of how Proposer will provide guidance throughout the entire process of booking Train for the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Fall of 2023. (i.e. communication to advise on steps, contact to advance event and promptness of answering questions and getting information). Provide detailed examples of how previous events have been handled and examples of how situations were handled when issues arose related to items requested in this RFP. (5 points possible)</p>	
<p>C.3 Provide a narrative of how Proposer will provide guidance throughout the entire process of booking To Kill a Mockingbird at the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Spring of 2024. (i.e. communication to advise on steps, contact to advance event and promptness of answering questions and getting information). Provide detailed examples of how previous events have been handled and examples of how situations were handled when issues arose related to items requested in this RFP. (5 points possible)</p>	
<p>C.4 Provide a narrative of how Proposer will provide guidance throughout the entire process of booking Old Crow Medicine Show for the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Fall of 2023. (i.e. communication to advise on steps, contact to advance event and promptness of answering questions and getting information). Provide detailed examples of how previous events have been handled and examples of how situations were handled when issues arose related to items requested in this RFP. (5 points possible)</p>	
<p>C.5 Provide a narrative of how Proposer will provide guidance throughout the entire process of booking Mean Girls for the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Spring of 2024. (i.e. communication to advise on steps, contact to advance event and promptness of answering questions and getting information). Provide detailed examples of how previous events have been handled and examples of how situations were handled when issues arose related to items requested in this RFP. (5 points possible)</p>	
<p><i>(Maximum Section C Score = 25)</i></p>	

ATTACHMENT 6.6

COST PROPOSAL & SCORING GUIDE					
NOTICE TO PROPOSER: This Cost Proposal MUST be completed EXACTLY as shown.					
PROPOSER NAME:					
SIGNATURE & DATE:					
<p><i>NOTE: The signatory must be an individual or a company officer empowered to contractually bind the Proposer. If the Signatory is not the Proposer company president, evidence SHALL be attached showing the Signatory's authority to bind the Proposer.</i></p>					
COST PROPOSAL SCHEDULE					
<p>The proposed cost, detailed below, shall indicate the proposed price for providing the entire scope of service including all goods and/or services as defined in the RFP Attachment 6.2. <i>Pro Forma Contract, Scope of Goods and/or services for the total contract period. The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the Institution. All monetary amounts are United States currency.</i></p>					
	Year 1	Year 2	Year 3	Year 4	Year 5
Cost Item Description					
The Proposers costs for this RFP must be addressed by line item, as follows:					
D.1 Total Cost Per Year					
D.2 Guarantee Amount to book Train for the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Fall of 2023					
D.3 Guarantee Amount to book To Kill a Mockingbird at the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Spring of 2024					
D.4 Guarantee Amount to book Old Crow Medicine Show at the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Fall of 2023					
D.5 Guarantee Amount to book Mean Girls at the ETSU Martin Center ETSU Foundation Grand Hall (1,200 seat capacity) in Spring of 2024					

The RFP Coordinator shall use the evaluation cost amount derived from the proposed cost amounts above and the following formula to calculate the COST PROPOSAL SCORE. Calculations shall result in numbers rounded to two decimal places.

Evaluation Cost Amount:
(sum of all weighted cost amounts above)

$\frac{\text{Lowest Evaluation Cost Amount}}{\text{Evaluation Cost Amount Being Evaluated}}$	X 35 (maximum section score)	= SCORE:
--	--	-----------------

Score Summary Matrix

	<i>PROPOSER NAME</i>		<i>PROPOSER NAME</i>		<i>PROPOSER NAME</i>	
QUALIFICATIONS & EXPERIENCE (maximum: 70 points)						
<i>EVALUATOR A</i>						
<i>EVALUATOR B</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE/ TOTAL:		AVERAGE/ TOTAL:		AVERAGE/ TOTAL:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: 25 points)						
<i>EVALUATOR A</i>						
<i>EVALUATOR B</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE/ TOTAL:		AVERAGE/ TOTAL:		AVERAGE/ TOTAL:	
COST PROPOSAL (maximum: 35 points)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: 130 points)						

**LISTING OF SYSTEM INSTITUTIONS
THE UT SYSTEMS OF HIGHER EDUCATION AND STATE OF TENNESSEE**

Locally Governed Universities

Austin Peay State University
East Tennessee State University
Middle Tennessee State University
Tennessee State University
Tennessee Technological University
University of Memphis

University of Tennessee – Chattanooga
University of Tennessee – Knoxville
University of Tennessee – Martin
University of Tennessee – Memphis
University of Tennessee – Tullahoma

Tennessee Board of Regents, System Office

Chattanooga State Community College
Cleveland State Community College
TCAT-Athens
Columbia State Community College
TCAT-Pulaski
TCAT-Hohenwald
Dyersburg State Community College
Jackson State Community College
TCAT-Jackson
TCAT-Whiteville
TCAT-Crump
TCAT-McKenzie
TCAT-Paris
TCAT-Newbern
TCAT-Ripley
TCAT-Covington
Motlow State Community College
TCAT-Shelbyville
TCAT-Murfreesboro
TCAT-McMinnville
Nashville State Community College
TCAT-Nashville
TCAT-Dickson
Northeast State Community College
TCAT-Elizabethton
Pellissippi State Community College
TCAT-Knoxville
Roane State Community College
TCAT-Oneida/Huntsville
TCAT-Harriman
TCAT-Jacksboro
TCAT-Crossville
Southwest Tennessee Community College
TCAT-Memphis
Volunteer State Community College
TCAT-Livingston
TCAT-Hartsville
Walters State Community College
TCAT-Morristown

State of Tennessee Departments

East Tennessee State University

Vendor Application Form

General Instructions

1. **Company Name and Bid Address.** Enter your company's name and the mailing address to where bids are to be mailed.
2. **Address to which payments are to be mailed.** Enter your company's mailing address where payments are to be mailed. If the same as the bid address, leave blank.
3. **Telephone (toll free).** Enter your company's toll-free telephone number.
4. **Telephone (other).** Enter your company's other (toll) telephone number.
5. **Fax.** Enter your company's fax number.
6. **Name of Contact Person.** Enter the name of the person who will serve as the company's contact person for bid purposes.
7. **Email Address of Contact Person.** Enter the email address of the person listed in #6.
8. **Company URL.** Enter your company's web address (URL).
9. **Federal Identification Number (FEIN):** Enter your company's federal identification number (FEIN).
10. **Social Security Number.** If applicant is an individual or if your company does not have an FEIN, enter your social security number.
11. **Type of Organization.** Choose and select **one** of the listed types of organizations that best describes your company.
12. **Kind of Ownership.** Choose and select **one** of the listed kinds of ownership that apply to your company. (See Minority and Woman Owned Business Ownership Clarifications below.)
13. **Minority Ethnicity Code.** For classification purposes to satisfy purchasing and reporting requirements of the State of Tennessee, this information is needed. Choose and select **one** of the listed minority ethnicity codes that describes your company's ownership. (See Minority Business Ownership Clarification below.)
14. **Annual Gross Sales.** For classification purposes to satisfy purchasing and reporting requirements of the State of Tennessee, this information is needed. Please choose and select **one** of the listed sales volume categories that best describes your company's annual gross sales amount. (See Small Business Ownership Clarification below.)
15. **Type of Business.** For classification purposes to satisfy purchasing and reporting requirements of the State of Tennessee, this information is needed. Choose and select **one** of the listed types of businesses that best describes your company. (See Small Business Ownership Clarification below.)
16. **Number of Employees.** For classification purposes to satisfy purchasing and reporting requirements of the State of Tennessee, this information is needed. Please specify the number of employees currently employed with your company. (See Small Business Ownership Clarification below.)
17. **Is Contractor or Contractor's parent company located outside the U.S.?** Yes No
18. **Excluded from Federal Procurement or Non-procurement Programs.** Are you or any of the principals of your company presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department agency from participation in bid processes? Answer yes or no.
19. **Preference for Reporting Purposes.** If your company qualifies in multiple categories as small, woman owned and/or minority, please specify in which category that you desire for your company to be considered for reporting and classification purposes.
20. **Comments.** List any additional information that you may wish to add to the application.
21. **Commodities.** As part of the vendor application process, please specify the commodities (goods and/or services) that are available for purchase from the applicant. The commodity code listing is enclosed.
22. **Certification.** Sign form and provide information as requested.

***Minority Ownership Clarification:**

"Minority owned business" means a business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

- a) African American (a person having origins in any of the black racial groups of Africa);
- b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- c) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
- d) Native American (a person having origins in any of the original peoples of North America).

****Woman-Owned Business Clarification:**

A "woman-owned business" means a woman owned business that is a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women

*****Small Business Ownership Clarification:**

A "small business" means a business that is independently owned and operated for profit, is not dominant in its field of operation and is not an affiliate or subsidiary of a business dominant in its field of operation.

The Governor's Office of Diversity Business Enterprise establishes small business guidelines on industry size standards. The criteria guidelines are required to be met in order for a business to be considered small. The annual receipts or number of employees indicates the maximum allowed for a small business concern and its affiliates to be considered small.

******Service-Disabled Veteran Business Enterprise (SDVBE) Clarification**

Tennessee Service-Disabled Veteran owned mean any person who served honorably on active duty in the Armed Forces of the United States with at least a twenty percent (20%) disability that is service-connected meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service. "Tennessee service disabled veteran owned business" means a service-disabled veteran owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function.

Tennessee Service-Disabled Veteran owned means a service-disabled owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function, and

1. is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled owned veterans;
2. In the case of a business solely owned by (1) service-disabled veteran and such person's spouse, is at least fifty percent (50) owned and controlled by the service-disabled veteran; or
3. In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veteran and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

TYPE OF BUSINESS	ANNUAL GROSS SALES	NO. OF EMPLOYEES
Agriculture, Forestry, Fishing	\$500,000	9
Architectural / Design / Engineering	\$2,000,000	30
Construction	\$2,000,000	30
Educational	\$1,000,000	9
Finance, Insurance & Real Estate	\$1,000,000	9
Information Systems / Technology	\$2,000,000	30
Manufacturing	\$2,000,000	99
Marketing / Communications / Public Relations	\$2,000,000	30
Medical / Healthcare	\$2,000,000	30
Mining	\$1,000,000	49
Retail Trade	\$750,000	9
Service Industry	\$500,000	9
Transportation, Commerce & Utilities	\$1,000,000	9
Wholesale Trade	\$1,000,000	19



East Tennessee State University

Vendor Application

Procurement & Contract Services

P.O. Box 70729

Johnson City, TN 37614-1710

www.etsu.edu/procurement

Phone: 423.439.6104

Fax application to: 423.439.5746 or

email to graytl@etsu.edu

<p>1. Company Name & Bid Address (Info will be verified against IRS records & vendor name)</p>	<p>2. Address to which payments are to be mailed (if same as #1, leave blank)</p>
<p>3. Telephone (toll free)</p>	<p>4. Telephone (other)</p>
<p>5. Fax</p>	<p>6. Name of Contact Person</p>
<p>7. Email Address of Contact Person</p>	<p>8. Company URL</p>
<p>9. Federal Identification Number (FEIN) Note: Company name must match IRS records</p>	<p>10. Social Security Number (if no FEIN)</p>
<p>11. Type of Organization (Check one)</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Foreign Individual</p> <p><input type="checkbox"/> Partnership <input type="checkbox"/> Medical/Health Corp</p> <p>State of Incorporation:</p> <p>Year of Incorporation:</p>	<p>12. Kind of Ownership (Check all that apply):</p> <p><input type="checkbox"/> Govt. (GO) <input type="checkbox"/> Minority</p> <p><input type="checkbox"/> Non-Profit (NO) <input type="checkbox"/> Woman (WO)</p> <p><input type="checkbox"/> Majority (MJ) <input type="checkbox"/> Small (SM)</p> <p><input type="checkbox"/> Service-Disabled Veteran</p>
<p>13. Minority Ethnicity Code (Check One):</p> <p><input type="checkbox"/> African American (MA) <input type="checkbox"/> Native American (MN)</p> <p><input type="checkbox"/> Hispanic American (MH) <input type="checkbox"/> Asian American (MS)</p> <p><input type="checkbox"/> Other Minority (MO) Specify:</p>	<p>14. Preference for reporting purposes:</p> <p><input type="checkbox"/> Small <input type="checkbox"/> Minority <input type="checkbox"/> Woman-Owned</p> <p><input checked="" type="checkbox"/> Service-Disabled Veteran <input type="checkbox"/> Disabled-Owned</p>
<p>15. Type of Business (Check one):</p> <p><input type="checkbox"/> Agriculture, Forestry, Fishing <input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Marketing/Communications/Public Relations</p> <p><input type="checkbox"/> Architectural/Design/Engineering <input type="checkbox"/> Educational</p> <p><input type="checkbox"/> Medical/Healthcare <input type="checkbox"/> Manufacturing (Continued)</p>	<p>16. Number of Employees <input type="text"/></p> <p>17. Is Contractor or Contractor's parent company located outside the U.S.? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, state Country: _____</p>

<input type="checkbox"/> Mining <input type="checkbox"/> Finance, Insurance & Real Estate <input type="checkbox"/> Information Systems/Technology <input type="checkbox"/> Transportation, Commerce & Utilities <input type="checkbox"/> Retail Trade <input type="checkbox"/> Service Industry <input type="checkbox"/> Wholesale Trade	18. Excluded from Federal Procurement or Nonprocurement Programs? Yes — No — https://www.sam.gov/portal/SAM/#1 19. Annual Gross Sales:
20. Commodities: List goods and services for which your company wishes to receive bid opportunities. If additional space is needed please attach a separate sheet to the vendor application.	

20. *	
SECTION A – CONTRACTOR IS AN INDIVIDUAL	SECTION B – CONTRACTOR IS A COMPANY (e.g. sole proprietorship, partnership, or corporation)
Is or has the Contractor been a state employee? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES	Does an individual (or an individual's immediate family member), who is or has been a state employee, own controlling interest (more than 4%) in the Contractor company? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES
Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES	Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES
21. Certification: By submitting this form, I certify that I am an authorized representative of the above company and that all the information as completed above is true and accurate. <div style="display: flex; justify-content: space-between; margin-top: 20px;"> _____ _____ _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Name Title Date </div>	

*Conflict of Interest Policy: https://www.etsu.edu/bf/procurement/purchasing/vendor_information.php

East Tennessee State University does not discriminate against students, employees, or applicants for admission or employment on the basis of race, color, religion, creed, national origin, sex, sexual orientation, gender identity/expression, disability, age, status as a protected veteran, genetic information, or any other legally protected class with respect to all employment, programs and activities sponsored by ETSU.

Vendor Product Accessibility Statement and Documentation

Purpose of Accessibility Statement

An effective Accessibility Statement includes several key components including:

- A clear statement of commitment to ensuring equal access for all users
- Required written documentation on the level of conformance with THEC/ETSU accessibility standards
- Information for users with disabilities regarding product/service accessibility features and gaps
- A mechanism to allow users to provide accessibility feedback
- Links to resources (internal or external) that provide additional or related information

Key Components

Commitment Statement

- Emphasize commitment to ensuring the accessibility of the product/service.
- Note any ongoing efforts to monitor for and remediate accessibility issues as they are identified.

Required Documentation

1. Provide written documentation on
 - a. how the product/service meets the THEC/ETSU accessibility standards,
 - i. WCAG 2.0 A&AA Guidelines/ISO/IEC 40500:2012
 - ii. 508 Voluntary Product Accessibility Template (VPAT)
 - iii. And EPUB3 Accessibility Guidelines (if applicable)
 - b. any available accessibility testing results
 - i. List any third-party agencies with whom you have worked to evaluate accessibility support
 - ii. Describe any formal testing process you use to determine accessibility support
 - iii. Indicate if you conduct user testing with persons with disabilities to verify accessibility support
 - c. and include the Conformance and Remediation Form when standards conformance is not fully achieved to demonstrate vendor's planned roadmap to full conformance.
2. Provide links to any other internal accessibility documentation (e.g., accessibility information within general product documentation, FAQs, best practices, tutorials, case studies, or white papers).
 - a. Note any other best practices or guidelines utilized during design and development (if applicable).

Product Usage Information for Users with Disabilities

- Describe any product features that may improve accessibility for users with disabilities including:
 - Accessibility-specific features (e.g. the ability to adjust font size and color/contrast settings for text or the availability of closed captions for videos)
 - General product features that may especially benefit users with disabilities (e.g. an 'HTML 5' mode optimized for mobile platforms that also improves keyboard-only navigation).
- Describe any high-impact product accessibility gaps along with suggested interim workarounds that allow users to complete key tasks until the gaps are resolved. For example, if a technical support website isn't compatible with screen readers used by the blind, appropriate interim workarounds might include:
 - Alternative business processes that bypass the accessibility barrier (e.g. providing phone-based support until the web-based support site is accessible)
 - Use of a third-party product to replace or supplement inaccessible product functions (e.g. indicating that users may submit or check the status of technical support tickets via email).

- Describe accessibility features provided by your communication channels (e.g. a deaf or hard-of-hearing user may contact you via a TTY line or access support personnel familiar with telephone relay services).

Feedback Mechanism

- Indicate whether you have specific resources devoted to handling accessibility questions/concerns and provide the contact information for these resources.
- Provide a specific mechanism for users to contact in order to:
 - Request accessibility-related assistance
 - Report accessibility problems
 - Request information in accessible alternate formats

Implementation Recommendations

Ensure that the Accessibility Statement is Easily Located on Company Website.

- Provide a hyperlink that points to the Accessibility Statement and meets the following criteria:
 - Descriptive (e.g. 'Accessibility' or 'Disability Access')
 - Prominently positioned (e.g. on the landing page, help/support page, and/or site map)
 - Easily identified (e.g. adequate text size and color/contrast, not the last link in a complex page)

Keep the Information in the Accessibility Statement and Documentation Current.

- Since accessibility support changes over time due to product updates, accessibility evaluations, and remediation activities, regularly review and update the Accessibility Statement so it remains up-to-date.
- Include a revision date for the Accessibility Statement so end users know whether the information is current.

Direct any questions or comments to the institutional Accessibility Liaison (insert email address).

Proposer Checklist for Prevention of Common RFP Mistakes that lead to Proposal Rejection

1. Attachment 6.5 – Mandatory Requirements: MUST BE PROVIDED IN FORMAT REQUESTED

STATED BY EACH REQUIREMENT

___ Bank Reference (Attachment 6.5A. 3.)

- Letter Format on bank letterhead
- Signed within last three (3) months by authorized representative of bank

Positive Credit Verification (Attachment 6.5A.4.):

___ Two (2) positive credit references

- Letter Format
- Prepared and signed within last three (3) months by vendors with whom Proposer has done business

AND

___ Official document or letter from accredited credit bureau within last three (3) months (Attachment 6.5 A.5.a.) Not Acceptable: Marketing materials which state credit rating

OR

___ Dun & Bradstreet Credit eValuator Plus Report, verified and dated within last three (3) months (Attachment 6.5 A.5.(b.)

___ Current Certificate of Insurance with RFP (Attachment 6.5A.7.)

- Acknowledgement:
 - If Proposer does not have required insurance limits at time of submission, Proposer must still submit valid and current insurance certificate.
 - However, successful Proposer will have an opportunity to submit certificate with required limits prior to ETSU awarding the contract.

___ Completed Minority/Ethnicity Form (Attachment 6.5A.6.)

___ Statement regarding Conflict of Interest (Attachment 6.5A.2.)

___ Signed and dated "Proposal Transmittal and Statement of Certifications and Assurances" form (Attachment 6.3)

2. Submission of Proposal

___ On-Time Submittal (§1.9; Attachment 6.5.A.)

- Deadline is in Section 2 – Schedule of Events
- Submission by deadline includes Technical Proposal and Cost Proposal
- Late Proposals will be IMMEDIATELY DISQUALIFIED (Attachment 6.5. A.)

___ Separately Sealed Cost & Technical Proposals (Attachment 6.5.A.)

___ **NO Cost Data** of **ANY** type (required cost or optional cost) in Technical Proposal (§§3.21, 3.3, Attachment 6.5. A.)

- **Including ANY costs in Technical Proposal may result in IMMEDIATE DISQUALIFICATION**

___ A proposer may not submit alternate proposals unless requested and must not submit one proposal as the prime contractor and another as a sub-contractor

3. Pro Forma Agreement

___ Review any "Comments" to the Pro Forma Agreement

* This checklist does not represent either a complete list of, or replacement for, the mandatory requirements listed in the RFP. This checklist is ONLY A TOOL meant to assist in the prevention of disqualification.

** Please also note that notations on proposals that materials submitted be kept confidential will not be honored. All bid documents and contracts become public records.