

Note to Bidders:

The following 19 number of pages represent the contract that will be awarded, if any, from this RFP. Please review it carefully and present any questions in writing to the contact identified for this RFP. Please note: the State will not accept any changes to the agreement terms and conditions for this RFP.

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 09/01)

AGREEMENT NUMBER 3046692

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Dept. of General Services/Procurement Division

CONTRACTOR'S NAME

2. The term of this Agreement is: _____ through _____

3. The maximum amount of this Agreement is: \$ _____

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made part of the Agreement.

- | | |
|--|----------|
| Exhibit A – Statement of Work, Development of Uniform Contracting and Procurement Policies from RFP.(pages ___ to ___) | XX pages |
| Contractor's Response to RFP (pages ___ to ___). | |
| Exhibit B – Budget Detail and Payment Provisions | XX pages |
| Contractor's Completed Cost Sheets, Attachments 6A, 6B, 6C & 6D from RFP (pages ___ to ___) | |
| Exhibit C – General Terms and Conditions | |
| Check mark one item below as Exhibit D: | |
| <input checked="" type="checkbox"/> Exhibit – D Special Terms and Conditions (Attached hereto as part of this agreement) | XX pages |
| <input type="checkbox"/> Exhibit – D* Special Terms and Conditions | |
| Exhibit E – Additional Provisions | XX pages |

This agreement is executed & awarded based on RFP DGS 02-04

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED(Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME DGS/Procurement Division		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Ralph Chandler, Deputy Director		
ADDRESS 707 3 rd Street West Sacramento CA 95605		
		<input type="checkbox"/> Exempt per:

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Exhibit A—Statement of Work

NOTE: The State will insert the Statement of Work, Developing Uniform Contracting and Procurement Policies from the RFP document and awarded bidder's response to RFP here.

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Exhibit B--Budget Detail and Payment Provisions

NOTE: The State will insert the Cost Worksheets from awarded bidder's response at the end of this Exhibit.

1. **Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

2. **Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

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Exhibit C--General Terms and Conditions

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

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10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **TIMELINESS:** Time is of the essence in this Agreement.

12. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

13. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

14. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

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d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

15. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

- a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

16. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.

17. UNION ORGANIZING For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

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Exhibit E—Additional Provisions

1. CONTRACTOR EVALUATION

Within sixty (60) days after the completion of this Agreement, the Contract Manager shall complete a written evaluation of Contractor's performance under this Agreement. If Contractor did not satisfactorily perform the work, a copy of the evaluation will be sent to the State Department of General Services, Office of Legal Services, and to Contractor within 15 working days of the completion of the evaluation. (PCC 10369)

2. PROGRESS REPORTS

Contractor shall submit progress reports to State representative, as required, describing work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. Contractor to be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending to designated address.

3. INVOICING PROCEDURES

In consideration for the satisfactory completion of the services described herein, the State agrees to pay the Contractor, in arrears, upon receipt of an invoice in duplicate, for services rendered under this Agreement.

Payment shall be in arrears contingent upon receipt of a (monthly, quarterly, etc.) invoice received and approved by the designated representative(s). The invoice must be submitted on contractor's letterhead signed by authorized representative, and include

- Agreement number
- Time period covered
- Work completed for the period shall be identified (detailed statement of services)
- Sub-contractor services

Submit invoices to: State Project Manager
DGS/Procurement Division
707 3rd Street, 2nd Floor
West Sacramento, CA 95605

4. CONFLICT OF INTEREST

A firm will not be awarded a contract if the financial interests are held by a current officer or employee of the state. Additionally, a contract will not be awarded to an officer or employee of the state as an independent contractor to provide goods and service. Likewise, the contracting agency officials and employees shall also avoid actions resulting in or creating an appearance of:

1. Using an official position for private gain;
2. Giving preferential treatment to any particular person;
3. Losing independence or impartiality;
4. Making a decision outside official channels; and,
5. Affecting adversely the confidence of the public or local officials in the integrity of the program.

Former State employees will not be awarded a contract for 2 years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for 1 year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the 12-month period to his or her separation from state service.

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5. DISPUTES

Unless otherwise provided in This Agreement, any dispute concerning a question of fact arising under This Agreement which cannot be resolved informally shall be decided by the following two-step procedures.

The Contractor must provide written notice of the particulars of such disputes to the Project Coordinator or his/her duly appointed representative. The Project Coordinator must respond in writing within ten (10) working days of receipt of the written notice of dispute. Should the Contractor disagree with the Project Coordinator's decision, the Contractor may appeal to the second level. Pending the decision on appeal, the Contractor shall proceed diligently with the performance of This Agreement in accordance with the Project Coordinator's decision.

The second level appeal must indicate why the Project Coordinator's decision is unacceptable, attaching to it Contractor's original statement of the dispute with supporting documents, along with a copy of the Project Coordinator's response. This letter shall be sent to the Deputy Director of Programs or his/her duly appointed representative. The second level appeal must be filed within fifteen (15) working days of receipt of the Project Coordinator's decision. Failure to submit an appeal within the period specified shall constitute a waiver of all such right to an adjustment of This Agreement. The Deputy Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director or designee shall be returned to the Contractor within fifteen (15) working days of the receipt of the appeal.

6. RIGHT TO TERMINATE

The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.

7. FORCE MAJEURE

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default of its subcontractor, arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

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8. FORCED, CONVICT, AND INDENTURED LABOR

"No foreign-made equipment, materials, or supplies furnished to the state pursuant to this contract may be produced in whole or in part by forced labor, convict labor, or indentured labor. By submitting a bid to the State or accepting a purchase order, the Contractor agrees to comply with this provision of the contract."

This requirement does not apply to public works contracts.

9. LABOR CODE/WORKERS' COMPENSATION

Contractor certifies and is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms to comply with such provisions before commencing the performance of the work of this contract.

10. LICENSES AND PERMITS

The Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this contract.

If you are a Contractor located within the State of California, a business license from the city/county in which you are headquartered is necessary, however, if you are a corporation, a copy of your incorporation documents/letter from the Secretary of State's Office can be submitted. If you are a Contractor outside the State of California, you will need to submit to the Dept. of General Services/Procurement Division a copy of your business license or incorporation papers for your respective State showing that your company is in good standing in that state.

In the event, any license(s) and/or permit(s) expire at any time during the term of this contract, Contractor agrees to provide agency a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

11. INSURANCE REQUIREMENTS

When Contractor submits a signed contract to the State, Contractor shall furnish to the State a certificate of insurance, stating that there is liability insurance presently in effect for the Contractor of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined.

The certificate of insurance will include provisions a, b, and c, in their entirety:

- a. That the insurer will not cancel the insured's coverage without 30 days prior written notice to the State.
- b. That the State of California, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this contract are concerned.
- c. That the State will not be responsible for any premiums or assessment on the policy.

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Contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to the approval of the Department of General Services, and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

The Department will not provide for nor compensate Contractor for any insurance premiums or costs for any type or amount of insurance.

12. DVBE REPORTING REQUIREMENTS

A 3% Disabled Veterans Business Enterprise (DVBE participation goal has been established for this Agreement. Attached to and made a part hereof (page __) is the DVBE Participation Reporting Form, which the Contractor will use to submit quarterly reports on DVBE participation. The Contractor will list at the end of each quarter the dates of invoices submitted, amounts of invoices submitted, amounts of invoices paid to the Disabled Veteran Business Enterprise(s), and the DVBE percentage from invoice totals. The completed DVBE Participation Reporting Form will be submitted at the end of each quarter to the following person:

Sandi Russell
Senior Acquisitions Specialist
DGS/Procurement Division
707 3rd Street, 2nd Floor
West Sacramento, CA 95605

(See attached reporting form from bidder's RFP response)

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EXHIBIT D – SPECIAL PROVISIONS

1. **Excise Tax**

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

2. **Settlement of Disputes**

In the event of a dispute, Contractor shall file a "Notice of Dispute" with Dept. of General Services, Procurement Division, Ralph Chandler, Deputy Director or his designee within ten (10) days of discovery of the problem. Within ten (10) days, the Deputy Director or his designee shall meet with the Contractor and Project Manager for purposes of resolving the dispute. The decision of the Deputy Director or his designee shall be final.

In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

3. **Evaluation of Contractor**

Performance of the Contractor under this Agreement will be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4), and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and over \$5,000.

4. **Potential Subcontractors**

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

CONTRACTOR CERTIFICATION CLAUSES

5. **STATEMENT OF COMPLIANCE**: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

6. **DRUG-FREE WORKPLACE REQUIREMENTS**: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

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b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

7. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION**: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
8. **UNION ORGANIZING** Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

9. **CONFLICT OF INTEREST**: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

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10. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
11. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
12. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
13. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
 - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
 - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
 - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
14. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
15. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.

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EXHIBIT E – ADDITIONAL PROVISIONS

1. Unanticipated Tasks

- a. In the event that additional work must be performed which was wholly unanticipated, and which is not specified in this Contract, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the procedures outlined in this article will be employed.
- b. For each item of unanticipated work, a Work Authorization will be prepared in accordance with the sample attached as Attachment A and will be incorporated into this Contract.
- c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a contract other than as provided pursuant to this Contract nor in any way amend or supersede any of the other provisions of this Contract.
- d. Each Work Authorization shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor, the job classification or approximate skill level of the personnel to be made available by the Contractor, an identification of all significant material to be developed by the Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the Contractor, an estimated time schedule for the provisions of these services by the Contractor, completion criteria for the work to be performed, the name or identification of the Contractor personnel to be assigned, the Contractor's estimated work hours required to accomplish the purpose, objective or goals, the Contractor's billing rates per work hour, and the Contractor's estimated total cost of the Work Authorization.
- e. All Work Authorizations must be in writing prior to beginning work and signed by the Contractor and the State.
- f. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:
- g. If, in the performance of the work, the Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, the Contractor will immediately notify the State in writing of the Contractor's estimate of the work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:
 - (a) Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld), or
 - (b) terminate the Work Authorization, or
 - (c) alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
- h. The State will notify the Contractor in writing of its election within seven (7) calendar days after receipt of the Contractor's notification. If notice of the election is given to proceed, the Contractor may expend the estimated additional work hours or services. The State agrees to reimburse the Contractor for such additional work hours.

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2. Invoicing, and Payment for Services

a. During the execution of each Work Authorization which involves the delivery to the State of identified deliverable items, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the Work Authorizations, determined on the basis of the lesser of either:

(1) the number of deliverables provided to the State divided by the total number of deliverables required to be delivered to the State, less 10 percent, less any amounts previously invoiced; or

(2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less 10 percent, less any amounts previously invoiced.

(3) For those Work Authorizations which do not involve delivery to the State of identified deliverable items, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Work Authorization, less 10 percent, less any amount previously invoiced. Actual progress payment amounts for such Work Authorizations must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.

(4) Upon completion of a Work Authorization to the satisfaction of the State, the full charge for such Work Authorization, less amounts previously invoiced to the State may be submitted for payment. However, this is only applicable when the benefits of completion of a Work Authorization can be fully utilized without completion of a subsequent Work Authorization(s).

(5) In the event that unanticipated work is performed, invoices for services as reflected on Work Authorizations will be submitted to the State for payment. The Contractor will invoice the State monthly for the work hours expended in each Work Authorization for the preceding month. Each such invoice shall reflect the number of hours worked by each classification of Contractor personnel and the applicable billing rates. In no event shall the total amount paid for such unanticipated work exceed 10 percent of the value of the personal services anticipated by this contract.

(6) Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.

(7) In the aggregate, invoices reflecting progress payments will not exceed 90 percent of the ceiling amount of the Contract, with the balance to be invoiced upon satisfactory completion of the Contract.

(8) The supporting documentation for each Deliverable will be detailed on the includes a Work Authorization/Deliverables Specification Document which contains, as a minimum, a description of the task, a statement of the Contractor's responsibilities, completion criteria, and a list of deliverable items (if any).

(9) The Contractor agrees that they will perform the services for which they are responsible, that they will accomplish this work in the manner and in the time stated in the Master Services Agreement Order and supporting documentation, and that they will provide the deliverable items as required. This performance is predicated, however, on the State meeting its responsibilities in the time and manner described in the Job Duty Statement.

B. Control and Supervision

The services provided by the Contractor to accomplish the Job Duty Statement shall be under the control, management, and supervision of the Contractor who is responsible for meeting the needs of the State agency requiring the service. The State shall monitor the progress and approve the results of the Contractor. It shall be the State's sole determination as to whether a deliverable and/or Order has been successfully completed.

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C. Personnel

1. Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State. There will be no increase in hourly rates for such extended hours or days.
2. Contractor personnel must be available to interview and work Statewide. There shall be no increase in hourly rates for different locations. Contractor costs related to items such as travel and per diem are costs of the Contractor. The State shall not pay for such costs as part of this contract nor as a separate item. The only exception will be when travel to multiple State sites which are not located in the same city or general vicinity, is required as part of the job and specified on the Job Duty Statement. Under this exception payment to the Contractor shall be governed by the same rules as "excluded" State employees for comparable State positions. All travel must be preauthorized by the Ordering agency for each occurrence. The exception does not pertain to on-site interviews.
3. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Agreement. If the State exercises this right, the Contractor must terminate the personnel from the individual order within three (3) working days of notice by the State.

(a)The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however, subject to Paragraph 5c above, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel. If such replacement personnel are not made available within ten (10) working days, another vendor will be asked to replace these persons. Any additional expense incurred in transitioning the new personnel will be charged to the original Contractor up to the total billable time of the Master Services Agreement Order. The Contractor may not otherwise substitute personnel without the State's prior written consent as evidenced from an approved amendment to the Master Services Agreement Order. The State will not unreasonably withhold consent.

(b)In recognition of the fact that Contractor personnel providing services under this Agreement may perform similar services from time to time for others, this Agreement shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Agreement, providing that such use does not conflict with the performance of services under this Agreement.

D. Protection of Internal State Documentation and Confidentiality of Discussions

The Contractor will have access to a considerable amount of internal documentation, some of which may be confidential or of a sensitive nature. Contractor agrees such documentation will not be removed from the State worksite and will not be discussed with anyone who is not involved on the Project without the consent of the State Project Manager. The contractor agrees to account for and insure that any documentation removed from the reference library is returned. Similarly, Contractor agrees that all discussions with State personnel are considered confidential and the information from such conversations will not be revealed or shared with personnel not involved in the project without the permission of the State Project Manager.

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E. Substitution of Personnel

The State expects that personnel proposed by the contractor for work on this project will remain on the project until completion. The Contractor shall not reassign Contractor team members if such reassignment will conflict with the work the individual is to perform on this Contract. The State recognizes that resignation or other events may cause a Contractor team member to no longer be available to the Contractor. However, any replacement personnel proposed during the life of the Contract must meet or exceed the skill level and experience that the Contractor proposed and was scored on. The State Project Manager will be the final decision authority as to whether substitute personnel met required qualifications and will approve the substitution of contractor team members.

F. Right in Data

All deliverables as defined in the Ordering Agency's Statement of Work originated or prepared by the contractor pursuant to this agreement including papers, reports, charts, and other documentation, but not including Contractor's administrative communications and records relating to this Agreement shall be delivered to and shall become the exclusive property of the State and may be copyrighted by the State.

The ideas, concepts, know-how, or techniques relating to the subject matter of each individual project, developed during the course of this Agreement by the contractor or jointly by the contractor and the State, can be used by either party in any way it may deem appropriate.

All inventions, discoveries or improvements of the techniques or programs or materials developed pursuant to this agreement shall be the property of the State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor or any other such person and further agrees that the Contractor or any other such person may sublicense additional persons on the same royalty-free basis.

This Agreement shall not preclude the Contractor from developing materials outside this agreement, which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this agreement. Pursuant to this Agreement, all preexisting intellectual property, copyrights, trademarks and products shall be the sole property of the Contractor.

G. Ownership in Data

The State owns data filed with or collected by the Contractor in both hardcopy, electronic and Internet formats. Data, in all forms, is the property of the State of California and copyrights, trademarks, servicemarks, or patents will not be filed that infringe on the exclusive ownership by the State.

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H. Project Payments (Public Contract Code 10379)

Contracts may provide for progress payments to Contractor for work performed or costs incurred in the performance of the contract. Not less than ten percent (10%) of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. However, if the contract consists of the performance of separate and distinct task, then any funds so withheld with regard to a particular task may be paid upon completion of that task and evaluation of the contractor's performance.

No state agency shall make progress payments on a contract unless it first has established procedures, approved by the department which will ensure that the work or services contracted are being delivered in accordance with the contract.

I. CONFLICT OF INTEREST CODE FOR THE DEPARTMENT OF GENERAL SERVICES

The Political Reform Act (Government Code Section 81000m et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, (2 California Code of Regulations Section 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearings, it may be amended by the Fair Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the departmental list designating officials and employees and establishing disclosure categories shall constitute the conflict of interest code for the DEPARTMENT OF GENERAL SERVICES.

Designated employees shall file their statements with the DEPARTMENT OF GENERAL SERVICES who will make the statements available for public inspection and reproduction (Gov. Code Section 81008). Upon receipt of the statement(s) to the Director, the agency shall make and retain a copy and forward the original of this statement(s) to the Fair Political Practices Commission. Statements for all others designated employees will be retained by the agency.

J. Multiple Year Contracts

It is mutually understood between the parties that this is a multi-year contract which may have been written before ascertaining the availability of the legislative appropriation of funds for the period covered. It was written for the mutual benefit of both parties to avoid program and fiscal delays.

This contract, so far as it relates to the State and Participating Agencies, is valid and enforceable only if sufficient funds are made available to the Participating Agencies by the California State Legislature for the Purpose of this program. In addition, this contract is subject to any special restrictions, limitations, conditions, any statute enacted by the State Legislature that may affect the provisions, terms or funding of this contract in any manner. Each Participating Agency has a financial obligation under this Agreement or the related Addendum to determine that existing appropriations are available, sufficient in amount to pay for such purchases or such other financial obligations.

The parties mutually agree that if the State Legislature does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

Each Participant has the option to terminate its participation, or to amend its contract, to reflect any reduction of funds.