

April 30, 2014

**REQUEST FOR PROPOSAL  
RFP No. 14-01**

**Notice to Prospective Proposers for  
Statewide Federal Compliance Audit for Fiscal Years 2014/15, 2015/16, 2016/17**

April 30, 2014

You are invited to review and respond to this Request for Proposal (RFP), entitled Statewide Federal Compliance Audit, RFP No.14-01 for the fiscal years ending June 30, 2015 and June 30, 2016, with the option for the fiscal years ending June 30, 2017.

Prospective contractors interested in responding to this RFP are encouraged to submit a postcard or brief letter indicating their interest and providing the firm's name and address. This postcard/letter should be sent to the attention of Ana Clark at the California State Auditor's Office by **May 14, 2014**. Submitting the postcard/letter will ensure that your firm/team receives supplemental or updated information that might be released subsequent to the State Auditor's formal issuance of the RFP.

Note that all agreements entered into with the State of California will include by reference General Terms and Conditions and Contractor Certification Clauses that may be viewed at [www.ols.dgs.ca.gov/standard+language/default.htm](http://www.ols.dgs.ca.gov/standard+language/default.htm). If you do not have Internet access, a hard copy can be provided by contacting the person listed below.

In the opinion of the California State Auditor, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this RFP is:

Ana Clark  
California State Auditor's Office  
916-445-0255  
E-mail: [Proposals@auditor.ca.gov](mailto:Proposals@auditor.ca.gov)

Please note that no verbal information given will be binding upon the California State Auditor unless such information is issued in writing as an official addendum.

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\* Required

#### KEY DATES

Listed below are the important dates and times by which the actions must be taken or completed. If the California State Auditor finds it necessary to change any of these dates, it will be accomplished by addendum.

<i>Action</i>	<i>Time</i>	<i>Date</i>
1. Release of RFP		April 30, 2014
2. Intent to Bid Postcard/Letter		May 14, 2014
3. Questions Due		May 16, 2014
<b>4. Proposals Due</b>	<b>9:00 a.m.</b>	<b>May 29, 2014</b>
5. Opening of Proposals	9:30 a.m.	May 29, 2014
6. Tentative Award of Contract		June 6, 2014
7. Contract Award and Execution		June 30, 2014

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## **Section I**

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### **REQUEST FOR PROPOSAL FEDERAL COMPLIANCE COMPONENT OF CALIFORNIA'S STATEWIDE SINGLE AUDIT**

The State of California, through the California State Auditor (State Auditor), requests proposals to be submitted for the following purpose and in accordance with each of the following terms and conditions:

#### **1. PURPOSE**

In this Request for Proposal (RFP), the State Auditor solicits qualified bidders who will be available to perform the federal compliance component of the California statewide Single Audit conducted pursuant to the Single Audit Act of 1984 (P.L. 98-502) and Single Audit Act Amendments of 1996 (P.L. 104-156) (Single Audit). Contingent upon successful negotiation of a contract, the contractor selected will perform the federal compliance component for the fiscal year ending June 30, 2015 and the fiscal year ending June 30, 2016. In the State's sole discretion, the State may exercise an option to extend the contract by one year. In the event that the State exercises its option to extend, the proposed contractor shall also perform the federal compliance component for the fiscal year ending June 30, 2017.

#### **2. BACKGROUND AND SCOPE OF WORK**

One of the primary audits conducted annually by the State Auditor is the comprehensive statewide Single Audit of California. The State Auditor's report opines on the fairness of California's general purpose financial statements and, combined with the compliance audit work performed on federal programs, fulfills the provisions of the Single Audit and the Office of Management and Budget (OMB) Circular A-133, which is a condition to the State's receipt of federal funds.

In fiscal year 2011-12, the State received cash and noncash federal assistance totaling \$74 billion from approximately 400 federal grant programs, excluding those administered by the California State University and University of California systems, which are audited by other auditors. Following the guidance in OMB Circular A-133, the State Auditor and its contractors audit roughly 35 federal programs each year.

##### Selection:

Proposals submitted in response to this RFP will be evaluated by the State Auditor to determine the best value—that is the most qualified and economical prospective contractor to enter into a contract with the State Auditor to perform the federal compliance component of the Single Audit, as described in more detail in Section II of this RFP.

##### Terms:

All terms of an offer, including price, are subject to negotiation by the State Auditor. The State Auditor expressly reserves the right to continue to perform all of the Single Audit if the State Auditor, in her sole discretion, determines that it would be the State's best interest to do so, price and other factors being considered.

The contractor selected for this engagement will be expected to perform the federal compliance portion of the Single Audit in accordance with requirements as set forth in the Single Audit Act and OMB Circular A-133 and all applicable rules and regulations. The contractor will be the Principal Auditor, performing all of the audit work related to the federal compliance portion of the Single Audit as described below. The State Auditor will be the Principal Auditor, performing all the audit work related to the financial statement portion of the Single Audit. In preparing a proposal, prospective contractor(s) must consider the need to coordinate with the State Auditor on this work.

For purposes of the Single Audit, the State is defined as all agencies; departments; colleges and universities; and other entities of the executive, legislative, and judicial branches of the California state government (state entities). Portions of funds under certain federal programs are passed through by the recipient state entities to other state entities and non-state subrecipients. Non-state subrecipients are outside the scope of this engagement.

Travel:

Although most state entities are headquartered in Sacramento, California, the requirements of the engagement may require a limited amount of travel to state agencies' offices and at various locations in the State. Additional information concerning the amount of travel historically required to perform the requested services will be made available, if requested.

Qualifications and Experience:

The contractor and all personnel proposed to perform professional services under the contract must have demonstrated knowledge of the Single Audit Act and the requirements of the OMB Circular A-133. They also should have experience in analyzing complex accounting systems, including IT systems. Additionally, the contractor must have a current and valid Certified Public Accountant (CPA) license from the State of California. The successful contractor shall follow the auditing standards set forth by the U.S. Comptroller General in the publication, *Government Auditing Standards*, and the auditing standards for the private sector as established by the American Institute of Certified Public Accountants (AICPA Standards) and must meet the independence requirements specified therein (Cal. Gov. C. Secs. 8546 and 8546.1). Finally, the contractor must demonstrate compliance with meeting auditing standards with respect to Continuing Professional Education (CPE) requirements and with respect to undergoing an external quality control review every three years.

Federal Compliance Audit Objectives:

Typical objectives of federal compliance audits include the expression of an opinion and reporting on the study and evaluation of internal controls, reporting on compliance with federal grant requirements and compliance with the schedule of expenditures of federal awards.

Contract Subject to Appropriation:

Payment under the contract will be subject to appropriation of sufficient funds to the State Auditor to cover the costs of the services described in this RFP.

### 3. AUDIT RESPONSIBILITIES AND DELIVERABLES

#### State Auditor Responsibilities:

The State Auditor will retain responsibility for auditing the financial statement portion of the Single Audit including preparing and signing the following auditor's reports:

- Independent Auditor's Report.
- Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.

The State Auditor will coordinate with the contractor for areas of the financial reporting and federal compliance components of California's Single Audit that overlap, including, but not necessarily limited to the following:

- Obtaining from the contractor a list of the major federal programs to be audited.
- Attending selected entrance and exit conferences and other meetings as appropriate with the contractor.
- The "Independent Auditor's Report on the Schedule of Expenditures of Federal Awards," including agreeing the Schedule of Expenditures of Federal Awards with the financial statements.
- The "Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an audit of the Schedule of Expenditures of Federal Awards Performed in Accordance with *Government Auditing Standards*"

The State Auditor will reserve the right, at its discretion, to review the contractor's workpapers.

The State Auditor will retain responsibility for publishing the "*State of California: Internal Control and State and Federal Compliance Audit Report for the Fiscal Year ended June 30, 2015.*"

#### Contractor Responsibilities:

The contractor will be responsible for all aspects of performing the federal compliance component of California's Single Audit, including, but not necessarily limited to, the following:

- Statewide audit planning including, job start letters, risk assessments, the selection of the major federal programs to be audited, and statewide materiality guidelines.
- Scheduling entrance and exit conferences with the appropriate departments, including the Department of Finance and the State Controller's Office.
- Program-level planning, including identifying relevant compliance requirements, setting materiality, and determining sample sizes.
- Obtaining an understanding of internal control over the federal programs sufficient to plan the audit to support a low assessed level of control risk.

- Planning the testing of internal control to support a low assessed level of control risk for the assertions relevant to the compliance requirements and performing tests of internal control as planned, unless the internal controls are likely to be ineffective.
- Performing sufficient tests of transactions and such other audit procedures necessary to determine whether laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each program were complied with and to support an opinion on compliance.
- Following up on prior audit findings, including performing procedures to assess the reasonableness of the summary schedule of prior audit findings (schedule) prepared by the Department of Finance and preparing endnotes to the schedule when needed.
- Preparing audit findings and obtaining department comments and corrective action plans.
- Coordinating with the Department of Finance to verify the accuracy of amounts reported in the Schedule of Expenditures of Federal Awards, as well as the Notes to that schedule.
- Preparing the Schedule of Findings and Questioned Costs.
- Preparing and signing the following auditor's report: "Independent Auditor's Report on Compliance With Requirements That Could Have a Direct and Material Effect on Each Major Program and On Internal Control Over Compliance in Accordance With OMB Circular A-133."
- Reviewing all audit work to ensure the work fully complies with *Government Auditing Standards*, AICPA standards, and OMB Circular A-133 requirements.
- Coordinating with the Department of Finance to complete and submit the Data Collection Form to the federal clearinghouse.
- Providing written monthly invoices and progress reports in the format and content to be determined by the State Auditor.
- Meeting all deadlines established by the State Auditor and as indicated in OMB Circular A-133.

The contractor will coordinate with the State Auditor for areas of the financial statements and federal compliance components of California's Single Audit that overlap, including, but not necessarily limited to the following:

- Providing the State Auditor a list of the major federal programs to be audited.
- When setting up the entrance and exit conferences, informing the State Auditor of their time and place at least one week in advance.
- For the "Independent Auditor's Report on the Schedule of Expenditures of Federal Awards," ensuring the Schedule of Expenditures of Federal Awards agrees with the financial statements.

#### Monitoring and Deliverables:

To assist the State in monitoring the contract, the contractor shall provide the State Auditor with original monthly invoices and progress reports in the form and content to be determined by the State Auditor.

For purposes of publishing the "*State of California: Internal Control and State and Federal Compliance Audit Report for the Fiscal Year ended June 30, 2015*" the contractor will provide the State Auditor at the completion of the federal compliance work in a published ready format no later than March 15, 2016, the following:

- The “Independent Auditor’s Report on the Schedule of Expenditures of Federal Awards”
- The “Report on Internal Control Over Financial Reporting on Compliance and Other Matters Based on an Audit of the Schedule of Expenditures of Federal Awards Performed in Accordance with *Government Auditing Standards*”
- The “Independent Auditor’s Report on Compliance With Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133” signed by the contractor.
- The “Schedule of Findings and Questioned Costs”
- A compilation of the compliance and internal control issues the contractor identified during fieldwork organized by federal department and titled, “Compliance and Internal Control Issues Related to Specific Grants Administered by Federal Departments.”
- The audited version of the Department of Finance’s “Schedule of Expenditure of Federal Awards”
- The audited version of the Department of Finance’s “Summary Schedule of Prior Audit Findings” and the auditor’s endnotes.

## Section II

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### Proposal Requirements and Information

#### 1. TIME SCHEDULE

All prospective contractors are hereby advised of the following schedule and will be expected to adhere to the required dates and times.

<u>Event</u>	<u>Date</u>
Request for Proposal Release Date	April 30, 2014
Intent to Bid Postcard/Letter	May 14, 2014
Written Questions Submittal Deadline	May 16, 2014
<b>Final Date for Proposal Submission</b>	<b>May 29, 2014</b>
Opening of Proposals	May 29, 2014
Evaluation Completed	June 5, 2014
RFP award notice posted in the State Auditor's Office lobby and on the State Auditor's Web site	June 6, 2014
Agreement Award	June 16, 2014
Contract approved and signed	June 30, 2014
Contract work starts	April 2015

#### 2. DUE DATE

TIME IS OF THE ESSENCE. Proposals must be submitted and received not later than **9 A.M. on May 29, 2014**, and shall be delivered via Federal Express or other similar delivery service, messenger or courier service. Late proposals will not be accepted without exceptional cause and the express written permission of the State Auditor.

#### 3. ADDRESS

Proposals shall be sent in a sealed envelope, clearly marked "Response to RFP No. 14-01," and addressed to:

California State Auditor's Office  
Attention: Ana Clark  
621 Capitol Mall, Suite 1200  
Sacramento, California 95814  
**DO NOT OPEN**

#### 4. QUESTIONS

Prospective contractors requiring clarification or further information on the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions with a cover page clearly marked "**Questions Relating to RFP No. 14-01**" via fax to (916) 327-0019, e-mail to [Proposals@auditor.ca.gov](mailto:Proposals@auditor.ca.gov) or mail to:

California State Auditor's Office  
Attention: Ana Clark  
Questions Relating to RFP No. 14-01  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

To ensure response, questions must be received in writing by 5 p.m. **May 16, 2014**. Question and answer sets will be provided to all prospective contractors who have submitted an intent to bid without identifying the submitters.

If disclosing questions regarding a proposal to other prospective contractors would compromise proprietary information, a prospective contractor may seek clarification or further information on the content of the RFP by marking the question packet "CONFIDENTIAL" and submitting questions as described above. The prospective contractor must explain why his/her questions are sensitive in nature. If the State Auditor concurs that disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered and both the question and answer will be kept in confidence. If the State Auditor does not concur with the proprietary aspect of a question, the question will not be answered in this manner and the prospective contractor will be so notified.

#### 5. COPIES

The prospective contractor should submit six (6) legible copies of its proposal. The original proposal must be marked "ORIGINAL COPY." All documents contained in the original proposal package must have original signatures and must be signed by a person who is authorized to bind the proposing firm. All additional proposal sets may contain photocopies of the original package.

#### 6. FORMAT OF PROPOSALS

To facilitate the two-stage review of proposals as described in Paragraph 11 of Section II of this RFP, each proposal should be submitted in two separate parts and in sealed envelopes. Part I should contain all responsive materials except those relating to cost. Part II should contain only information relating to costs that will be charged by the contractor.

## 7. MINIMUM CONTENTS OF PROPOSAL

At the sole discretion of the State Auditor, a proposal may be eliminated from consideration if it fails to contain each of the following provisions or to provide a justification satisfactory to the State Auditor for its exclusion:

a. Contractor

Identification of the prospective contractor, including the name of the firm submitting the proposal, its mailing address, telephone number, and contact if further information is desired.

b. Management.

Identification by name of the lead personnel the contractor proposes to assign to the engagement. Contract terms will not permit substitution of lead personnel without prior written approval of the State Auditor.

c. Personnel.

For each individual that the prospective contractor proposes to assign to the engagement (excluding administrative support), the proposer should provide a summary of similar work or studies performed, a resume, and a statement indicating his/her planned responsibilities under the contract. Any limiting factors on the availability of these individuals should be identified. Auditors assigned to the engagement must have experience and expertise in performing federal compliance audits as part of a statewide Single Audit or program-specific audits of large federal programs at the state level. The proposal should also specifically state:

- Whether the proposed staff have received continuing professional education in governmental accounting and auditing during the last two years;
- Whether the proposed staff are independent, as defined by applicable auditing standards and free from conflicts of interest as described in Subparagraph (g) of this paragraph;
- Whether the proposed staff or the firm has received an external quality control review within the last three years and the results of that review.
- Whether the proposed staff or the firm has been the object of any disciplinary action by a licensing or regulatory authority during the past three years.

Former employees of the State Auditor may not work on any State Auditor contract project within one year of termination. The State Auditor, in its sole discretion, reserves the right to reject any individual proposed to be assigned to the engagement.

d. Related experience.

Prospective contractors shall provide the State Auditor with a listing of audit engagements similar to the types of audits described in this RFP. Specifically, the list must include three examples of engagements in which the contractor conducted compliance audits of complex governmental or private organizations. The listing should include:

- Title of the project;
- Name of the entity;
- Brief description of the project; and
- Name and telephone number of the entity's contracting officer.

By furnishing this information, the prospective contractor gives permission to the State Auditor to contact these entities regarding the prospective contractor's past performance.

If the firm is newly organized, a listing of projects completed by lead personnel during previous employment may be acceptable. Moreover, if the contractor is a joint venture, the experience of the joint venturers may be combined.

e. Subcontracts.

The prospective contractor should list any prospective subcontractors it plans to use in performing the work, including a listing of the individuals the subcontractor proposes to assign to the engagement and the location where the work will be performed, in accordance with Subparagraphs (b) and (c) of this paragraph. The State Auditor, in its sole discretion, reserves the right to reject subcontractors proposed by the contractor. Subcontractors, if used, shall be subject to all terms, conditions, and qualifications required by this RFP.

f. Methodology.

The proposal shall include a description of the prospective contractor's overall approach to providing the services described in Section I of this RFP. The proposal must include specific techniques, administrative and operational management expertise, and typical staffing patterns (e.g., ratio of management and key staff to general professional staff) used in the types of audits described in this RFP.

g. Independence/Conflict-of-Interest Disclosure.

- (i) The prospective contractor must disclose and shall have a continuing duty to disclose any financial, business, or other relationship of the contractor, subcontractor, or individual employees that may have an impact on the work to be performed (see **Attachments C and K** to this RFP).
- (ii) In this disclosure, the prospective contractor should include information regarding situations that might create an appearance of a lack of independence, regardless of whether the prospective contractor believes that the situation creates an actual conflict of interest, and how the prospective contractor intends to manage such situations. If the contractor believes that there may be an appearance of a conflict of interest or lack of independence based on any previous or ongoing work the contractor has performed, the contractor shall specifically address how it plans to address and manage that appearance, including, but not limited to, how appropriate fire-walls would be established by the contractor to guard against that appearance.
- (iii) If the contractor believes that no conflict of interest or appearance of lack of independence as described above exists, then a statement to that effect must be made in the contractor's proposal.
- (iv) The State Auditor shall have the right to disqualify or terminate a contractor if it believes that the best interests of the State require that the contractor be disqualified or terminated because the contractor has a conflict of interest or because a situation exists that creates the appearance of a lack of independence and also to disqualify any proposed personnel on that basis.
- (v) In accordance with State Auditor policy, any contractor selected to provide consulting services to the State Auditor will be required to submit conflict-of-interest disclosure statements in the form required by the State Auditor (see Paragraphs 17 and 18 of **Attachment B** of this RFP).

h. Cost

The proposal shall include a separate quotation of charges per fiscal year, including the classes of personnel to be used in the project, the total hourly rate charged for each class, the estimated number of hours that each class of personnel will charge, and any other costs for equipment, software, or supplies. That cost component must project the total number of hours required to produce the deliverables and contain a cost quotation of charges for each class of personnel that would be used to produce the deliverables. The proposal should also include a cost component for expert testimony that may be required after the report is issued.

The charges should be provided as hourly rates and should be applicable throughout the contract period.

The proposal should detail any other charges (such as charges for clerical support, reproduction, and delivery) that would be charged to the State Auditor and include them. If the State Auditor requires travel, the rates for travel-related expenses shall not exceed the rates established for employees of the State of California.

The State Auditor will pay only for hours actually worked at the rates submitted and for actual expenses incurred.

The amount available for the costs of travel, if any, shall be negotiated with the selected contractors in conformity with subparagraph (c) of Paragraph 4 of **Attachment B** of this RFP.

i. Preference Programs

(i) Small Business Preference Program

The proposal should include a statement indicating whether or not the firm claims a small business preference and proposers should certify its small business certification using **Attachment I**.

This RFP does not include a minimum Small Business (SB) participation preference. Bidders claiming the 5% preference must be certified by California as a small business or must commit to subcontract at least 25% of the net bid price with one or more California Certified Small Business (CCSB). Certification must be obtained no later than 5:00 p.m. on the bid due date.

To claim the CCSB preference, which may not exceed 5% for any bid, the firm must have its principal place of business located in California, have a complete application (including proof of annual receipts) on file with the State Office of Small Business and DVBE Services (OSDS) by 5:00 p.m. on the bid due date (see Section 1.2) and be verified by such office.

If a firm qualifies for this Small Business Preference, the State Auditor will reduce the firm's cost estimate by 5 percent when comparing it to the cost estimates included in the other proposals received.

(ii) Disabled Veteran Business Enterprise (DVBE) – Declaration & Program Incentive

The DVBE Incentive Program applies to this solicitation. It is separate from the DVBE Participation Program. The incentive is used only for evaluation purposes to arrive at the successful bidder and does not alter the amounts of the actual bid. Any

responsive and responsible bidder with the confirmed DVBE Participation per Table 1 is eligible to receive the incentive, which will be applied only to the cost proposal portion of the proposal. Bidders, who are not responsive or responsible, regardless of the amount of DVBE participation, are not eligible to receive the incentive.

The State Auditor will apply the incentive to bids proposing the utilization of DGS Certified DVBE firms identified in the Bidder Declaration (**Attachment J**). Information provided on the Bidder Declaration shall be verified by the State Auditor prior to award of the contract. The incentive amount is applicable to the cost portion of the proposal and is equal to a percentage of the lowest responsive and responsible bids based on the amount of the DVBE participation in the bid being evaluated per Table 1. When applying the DVBE Incentive, a Non-Small Business shall not displace an award to a DGS Certified Small Business.

Table 1: DVBE Participation (Low Price Method)

Verified DVBE Participation	DVBE Incentive Amount
5% or More	5%
4% - 4.99 %	4%
3% - 3.99%	3%
2% - 2.99%	2%
1% - 1.99%	1%

(iii) Target Area Contract Preference

Contractor requesting the Target Area Contract Area Preference shall submit a completed preference request form (**Attachment M**) and shall comply with all of the following:

1. Contractor or vendor agrees to comply with the requirements of the Target Area Contract Preference Act (Gov. Code, Section 4530, et seq.) and attendant rules and regulations (Cal. Admin. Code, Tit. 2, Section 1896.30, et seq.).
2. Contractor or vendor agrees that the state contracting agency, or its delegee, will have the right to inspect its facilities and operations and to inspect, review, obtain, and copy all records pertaining to performance of the contract or compliance with the requirements of the Act and attendant rules and regulations. Contractor or vendor further agrees that such records shall be maintained for a period of three (3) years after the final payment under the contract.

3. Contractor or vendor agrees with respect to a certification to hire persons with high risk of unemployment, to:
  - a. Act in good faith for the purpose of maintaining such persons as employees for the duration of the contract performance; and
  - b. To make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons with high risk of unemployment; and
  - c. To promptly report to the state contracting agency and thereafter confirm in writing within seven (7) days the names of such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate the reasons for the termination or absence. Contractor or vendor agrees under such circumstances to consult with the state contracting agency and the Employment Development Department with respect to replacement of such persons.
  
- j. Darfur Contracting Certification.

The proposal shall include an executed Darfur Contracting Act Certification. The Certification is **Attachment H** to this RFP.

- k. Trade Secrets or Other Confidential Proposal Information

Any components of the proposal reflecting trade secrets or other confidential information shall be prominently marked "CONFIDENTIAL" and shall identify the reasonable legal basis for confidentiality. The State will deem those of the proposal portions not marked "CONFIDENTIAL" releasable under the California Public Records Act.

## 8. OTHER CONTENTS OF PROPOSAL

The prospective contractor may include any relevant information and pertinent exhibits in the proposal. Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this solicitation letter. Emphasis should be on conformance to the instructions and responsiveness to the requirements described herein, and on completeness and clarity of content.

In preparing the proposal, prospective contractors should take into account the requirements of each attachment described in Paragraph 16 of this Section II. Proposals must be complete in all respects and submitted by dates and times shown in Section II, Item 1 of this RFP. A proposal may, in the sole discretion of the State Auditor, be rejected if it is conditional, incomplete, or it contains any alterations of form or other irregularities.

## **9. GOVERNMENT AUDITING STANDARDS**

The prospective contractors must complete each project or program in compliance with the current Government Auditing Standards as promulgated by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants (see Cal. Gov. C. Secs. 8546 and 8546.1).

## **10. CONFIDENTIALITY**

To ensure compliance with the statutes governing the State Auditor's work, the contractor and each of its employees, agents, or subcontractors assigned to the contract will be required to execute the confidentiality agreement (Cal. Gov. C. Sec. 8545.3), attached hereto as **Attachment C**.

## **11. REVIEW PROCESS AND CRITERIA**

Subject to Paragraphs 7 and 13 of this Section II, the State Auditor will select the successful contractors on the basis of both merit and cost, with a preference of 5 percent on the cost of its proposal given to qualified small businesses, disabled veteran business enterprises, and target area contractors. An evaluation committee will only be given Part I of each proposal and will score the merit of each proposal using the following criteria:

REVIEW PROCESS AND CRITERIA	Maximum Points
<b><u>Part I Technical Merit</u></b>	
<b>Technical Aspects of Proposal:</b>	
Quality of approach and methodology	30
Clarity and succinctness of proposal	10
<b>Organizational Capabilities:</b>	
Demonstrated ability to successfully perform federal compliance audits of complex entities	25
Qualifications and experience of management and lead staff to be assigned to the project	20
Related organizational experience	<u>15</u>
<b>TOTAL</b>	<b><u>100</u></b>

Any proposal not receiving a merit score of 75 or more will be eliminated from further consideration. To determine the merit score, the State Auditor may apply a statistical averaging method to scores submitted by the evaluation committee.

**Part II (Cost Proposal)** of the proposal will be evaluated for each contractor scoring 75 or more merit points.

The overall evaluation will be in accordance with the following process:

During this phase, cost proposals will be opened. The cost proposal with the lowest price will be assigned a score of 100 points or 35 percent (after adjustments are made for any applicable preference programs). Other cost proposals will be assigned points on a proportional basis relative to the cost of the lowest bid (and adjustments are made for any applicable preference programs). For example, if the second lowest bid is 20 percent higher than the lowest cost bid, it will be assigned a point score of 80 (or 20 percent), which is 20 percent lower than the point score or rate of the lowest cost bid.

The Part I— Technical Merit score will be weighted 65 percent and each cost score from Part II, will be weighted 35 percent to create a combined overall score of 100 percent.

The firm with the highest score at the end of Part II will be awarded the contract agreement.

If no proposals are received containing bids offering a price, which in the opinion of the State Auditor is a reasonable price, the State Auditor is not required to award an agreement.

During the evaluation and selection process, the State Auditor may request the presence of a prospective contractor's representative for answering specific questions, orally and/or in writing. If discrepancies between sections or other errors are found in a final proposal, the State Auditor may reject the proposal; however, the State Auditor may in its sole discretion, retain the proposal and correct any arithmetic or transposition errors in price or quantity. The State Auditor will notify all prospective contractors of its decision to award the contract.

## **12. NOTICE OF INTENT TO AWARD AND PROTEST PROCEDURES**

The State Auditor will notify all prospective contractors of its tentative decision to award the contract. Within five days after the notification by the State Auditor, any person or firm that has submitted a proposal can protest the tentative award of the contract to another party by submitting the grounds for the protest to the State Auditor. The State Auditor will make a final award of the contract if it determines that the grounds for the protest are invalid.

If the State Auditor determines that the grounds for the protest are valid, the State Auditor will notify all prospective contractors of the tentative change in the award of the contract. The procedure described in the previous paragraph will then again be followed. Upon resolution of the protest and award of the agreement, the selected Contractor must sign and submit to the State Auditor, page one (1) of the Contractor Certification Clauses (CCC), which can be found on the internet at [www.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language)

## **13. RIGHT TO REJECT ANY OR ALL PROPOSALS**

The policy of the State Auditor is to solicit proposals with a bona fide intention to award a contract. The State Auditor, in her sole discretion, may reject any and all bids submitted in response to this RFP, without regard to the cost or quality of any proposal, or other considerations upon determination that it is in the best interest of the State Auditor to do so.

## **14. MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Any proposal that the State Auditor receives before the deadline to submit proposals may be withdrawn or modified by written request of the prospective contractor. However, to be considered, the modified proposal must be received by the deadline.

## **15. MODIFICATION OR AMENDMENT OF THIS REQUEST**

This RFP may be modified at any time prior to the time set for receipt of proposals and thereafter as long as no proposal has been opened. Upon any such modification, all prospective contractors will be notified, and any person or firm who has expressly requested such notice in writing will also be notified. However, persons or firms who have been invited to propose, but who have not indicated their interest in writing, may not be notified of such changes at the discretion of the State Auditor.

## **16. INCORPORATION OF ATTACHMENTS**

This RFP consists of 65 pages and contains the following attachments, which are hereby incorporated into this proposal by reference:

- Attachment A:** Standard Agreement Form
- Attachment B:** General Terms and Conditions
- Attachment C:** Confidentiality/Nondisclosure Agreement
- Attachment D:** Encryption and Information Privacy Policy
- Attachment E:** Working Paper Standards
- Attachment F:** Security Agreement
- Attachment G:** Certification of Special Terms and Conditions
- Attachment H:** Darfur Contracting Act Certification
- Attachment I:** Proposal/Proposer Certification Sheet
- Attachment J:** Bidder Declaration
- Attachment K:** Independence Questionnaire/Conflicts of Interest Disclosure
- Attachment L:** Required Attachment Checklist
- Attachment M:** Target Area Contract Preference References and Instructions

## **17. ACCEPTANCE**

Proposals to this request by prospective contractors constitute an express acceptance of all provisions of this RFP, including all attachments, exhibits, and schedules. If a prospective contractor indicates an unwillingness to accept any provision, its proposal may be rejected by the State Auditor. However, the State Auditor, in its sole discretion, may negotiate with the contractor on specific provisions of the final agreement.

## **18. AGREEMENT EXECUTION AND PERFORMANCE**

Service shall start not later than 5 days, or on the express date set by the State Auditor and the Contractor, after all approvals have been obtained and the agreement is fully executed. Should the Contractor fail to commence work at the agreed upon time, the awarding agency, upon five (5) days written notice to the Contractor, reserves the right to terminate the agreement. In addition, the Contractor shall be liable to the State for the difference between Contractor's Proposal price and the actual cost of performing work by another contractor.

## **19. PUBLIC DISCLOSURE OF PROPOSAL**

All proposals will become property of the State of California and will, along with the summaries of evaluations, be available to the public for review after the contract is awarded. Proprietary information, as reasonably identified by the proposed contractor, in the proposals will remain confidential as permitted by law. To prevent its release to the public, the proposer must indicate what information in the proposal is proprietary, along with a citation to the relevant provisions of law exempting or precluding that information from public disclosure.

## Standard Agreement Form

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD. 2 (REV. 5-91)

APPROVED BY THE  
 ATTORNEY GENERAL

CONTRACT NUMBER	AM. NO.
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE

AGENCY

\_\_\_\_\_ , hereafter called the State, and

CONTRACTOR'S NAME

\_\_\_\_\_ , hereafter called the Contractor.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows: *(Set forth service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)*

CONTINUED ON \_\_\_\_\_ SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA		CONTRACTOR				
AGENCY		CONTRACTOR <i>(If other than an individual, state whether a corporation, partnership, etc.)</i>				
BY (AUTHORIZED SIGNATURE) ▷		BY (AUTHORIZED SIGNATURE) ▷				
PRINTED NAME OF PERSON SIGNING		PRINTED NAME AND TITLE OF PERSON SIGNING				
TITLE		ADDRESS				
AMOUNT ENCUMBERED BY THIS DOCUMENT \$	PROGRAM/CATEGORY (CODE AND TITLE)	FUND TITLE		<i>Department of General Services Use Only</i>		
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$	(OPTIONAL USE)					
TOTAL AMOUNT ENCUMBERED TO DATE \$	ITEM	CHAPTER	STATUTE			FISCAL YEAR
	OBJECT OF EXPENDITURE (CODE AND TITLE)					
<i>I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.</i>		T. B. A. NO.	B. R. NO.			
SIGNATURE OF ACCOUNTING OFFICER ▷		DATE				

CONTRACTOR     STATE AGENCY     DEPT. OF GEN. SER.     CONTROLLER

**General Terms and Conditions**

1. **PURPOSE**\_\_\_\_\_ (See Section I of this RFP).
2. **TERM**\_\_\_\_\_ (See Section I of this RFP).

Not later than January 30, 2017, the State shall notify Contractor of its intention to exercise the option to renew this Agreement for the purposes of Contractor providing auditing services for the Statewide Federal Compliance Audit for the fiscal year ending June 30, 2017. Not later than March 30, 2017, the State shall provide Contractor with the list of anticipated Selected Programs for the fiscal year ending June 30, 2017. Those additional audit services shall be provided as specified in a written proposal submitted by Contractor to the State not later than April 30, 2017, unless that date is otherwise extended in writing by the State. Contractor's proposal shall be based on that list, shall meet the requirements for proposals listed in the RFP 14-01, and shall conform to Contractor's proposal submitted in response to that RFP. Upon receipt and approval of that proposal, the State will amend this Agreement to provide for additional amounts for the services, if any, provided under this subparagraph. The State may request Contractor to submit additional written proposals to perform additional selected programs for the fiscal year ending June 30, 2017. Upon receiving that request, Contractor shall submit a written proposal that meets the requirements set forth in the RFP 14-01. The State must approve the proposal for additional work prior to Contractor commencing that additional work.

3. **DESCRIPTION OF SERVICES**\_\_\_\_\_ (See Section I of this RFP).
4. **AMOUNT PAYABLE**

The total amount payable under this Agreement may not exceed \_\_\_\_\_ and is payable as follows:

- (a) The State shall pay the Contractor for services actually performed under this Agreement in accordance with the hourly rate schedule attached hereto as \_\_\_\_\_ (as proposed by selected Contractor).
- (b) The State agrees to reimburse the Contractor for services performed by the Contractor, upon the prior written approval of the State, in locations other than the premises of the State in Sacramento, California. The State shall pay the Contractor for these services in accordance with subparagraph (a) of this Paragraph 4 of this Agreement.
- (c) In consultation with the Contractor, the State shall make air travel and car rental arrangements for travel required under this Agreement. The State shall pay the Contractor for other travel and living expenses actually incurred by the Contractor, as documented by the Contractor in the manner prescribed by the State, in providing the auditing services that are the subject of this Agreement at locations other than the Contractor's usual place or places of business. Reimbursement shall be made as follows:

- (i) Other transportation: actual, reasonable expenses, supported by a receipt, or mileage at the applicable state rate, as appropriate.
- (ii) Living expense: actual expenses, not to exceed maximum state employee reimbursement rates for nonrepresented employees, to be claimed and computed in accordance with the California Department of Human Resources regulations in effect when the expenses are incurred.

<b>Meals</b>	<b>Lodging</b>
Breakfast—actuals up to \$8	\$120 Los Angeles (excluding the city of Santa Monica), Orange, and Ventura counties and Edwards AFB
Lunch—actuals up to \$12	\$125 Alameda, Monterey, San Diego, San Mateo, and Santa Clara counties
Dinner—actuals up to \$20	\$95 Napa, Riverside, and Sacramento counties
	\$150 San Francisco county and city of Santa Monica
	\$90 for all other areas

- (d) The State shall reimburse the Contractor for the Contractor’s actual out-of-pocket expenses, including travel, in an amount not to exceed five thousand dollars (\$5,000.00). Additional travel expenses shall be pre-approved by the State Auditor. The Contractor shall not charge the State any overhead or cost of advancing funds in connection with these expenses. All reimbursable expenses shall be supported by documentation at the time of billing, unless otherwise agreed to by the State prior to the expenditure. Reimbursable out-of-pocket expenses shall include, but not be limited to:
  - (i) Postage.
  - (ii) Messenger and courier service.
  - (iii) In-house document reproduction at a rate not to exceed \$0.10 per page. The billing statement shall contain a general description of documents copied, purpose, and number of copies made.
  - (iv) Long-distance telephone charges as they appear on the Contractor’s bill (i.e., without markup).
  - (v) Outgoing facsimile at a rate not to exceed \$0.25 per page, inclusive of long distance charges.
- (e) The consideration to be paid to the Contractor, as set forth, is in compensation for all of the Contractor’s expenses incurred performing this Agreement, including travel, living expenses, per diem, and taxes, if any.
- (f) The State may withhold an amount equal to 10 percent (10%) of the amount claimed on each invoice submitted by the Contractor. The amounts withheld shall be paid by the State upon successful completion of each Phase of the contract, acceptance of the projects by the State, and a determination by the State that the Contractor has complied with Paragraph 10 of these General Terms and Conditions.

- (g) The State, in its sole discretion, may reduce the amount payable for a specific deliverable that the Contractor fails to deliver on the mutually agreed upon date by up to five percent (5%) of the amount payable for that deliverable.
- (h) The State shall make payment to the Contractor, as promptly as fiscal procedures permit, for services performed under this Agreement in accordance with applicable completion criteria and in accordance with the invoices submitted by the Contractor. The State's obligation to pay any amounts due under this Agreement is contingent upon the appropriation and approval of funds for that purpose. That payment is subject to Paragraph 10 of these General Terms and Conditions.
- (i) The Contractor, when billing the State for services under this Agreement, shall itemize the dates and hours, together with a description of the services performed, and shall identify specifically the individual performing those services and his or her designation (for example, principal or associate consultant).
- (j) It is mutually understood between the parties that this is an option Agreement that may include services for multiple years and that the Agreement 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.

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

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

Each participant has the option to terminate its participation, or to amend its Agreement, to reflect any reduction in funds.

- (k) In accordance with RFP No. 14-01, the State may exercise a one-year option to extend this contract for the fiscal year ending June 30, 2017. The parties agree to amend this Agreement to include the additional amounts reflected in the Contractor's proposal to RFP No. 14-01, if the State, in its sole discretion, exercises the one-year option.

## **5. CONTRACTOR PERSONNEL**

- (a) The Contractor, and the agents and employees of the Contractor, shall act, in the performance of this Agreement, in an independent capacity and not as officers, employees, or agents of the State. In accordance with that independent capacity, it is mutually understood and agreed that the State has no right under this Agreement to control or direct the manner or means by which the Contractor undertakes to provide the services to be rendered to the State, and that the Contractor shall exercise independent judgment in all matters pertaining to the manner and means of its performance under this Agreement.

- (b) Subject to subparagraph (a) of this Paragraph 5 of this Agreement, the Contractor shall ensure that its employees and agents, whenever performing services on the State's premises, observe all reasonable instructions and directions issued by the State.
- (c) The individuals named in \_\_\_\_\_ of this Agreement are essential to providing services under this Agreement. Audit services provided under this Agreement by any other individuals employed by the Contractor must receive the prior written approval of the State.

**6. PROJECT COORDINATOR**

\_\_\_\_\_ is the designated Project Coordinator for the State under this Agreement. The State may change the Project Coordinator at any time by submitting to the Contractor a notice of change signed by the State. \_\_\_\_\_ is the designated Project Coordinator for the Contractor.

**7. BUSINESS SERVICES COORDINATOR**

\_\_\_\_\_ is the designated Business Services Coordinator for the State. Any questions regarding travel, reimbursements, billing, or other similar questions should be directed to \_\_\_\_\_. \_\_\_\_\_ is the designated Business Services Coordinator for the Contractor.

**8. STATE PERSONNEL**

The Contractor will not be permitted to use State personnel for performing services that are the responsibility of the Contractor unless that use is previously agreed to in writing by the Project Coordinator, and any appropriate adjustment in price is made. No charge will be made to the Contractor for the services of state employees while performing, coordinating, or monitoring functions.

**9. CONFIDENTIALITY OF INFORMATION**

- (a) The audit reports and records, documents, or information used in support of the reports that are made available to the Contractor, or that are generated by the Contractor, during the course of the audit, including, but not limited to all financial, statistical, proprietary, market sensitive, highly sensitive, personal, technical, and other information used in support of or contained in those reports, are confidential and shall be protected by the Contractor from unauthorized use or disclosure, as described in this agreement. In providing that protection, the Contractor shall comply with this agreement and any other reasonable procedural requirements of the State that are provided in writing to the Contractor.
- (b) Except as required by law, legal process, or applicable professional standards, the Contractor shall not publicly disclose data or disseminate the contents of any draft audit report or any workpapers, records, documents, or information used in support of any draft audit report. Except as required by law, legal process, or applicable professional standards, the Contractor shall not publicly disclose data or disseminate the contents of the final audit report or any records, documents, or other information used in support of the audit report without the written permission of the State. Permission to publicly disclose the contents of an audit report or workpapers on one occasion on behalf of the State or to give testimony at a public hearing held by a legislative committee relating to the audit report shall not authorize the Contractor to further disclose information in the report or to disseminate this information on any other occasion on behalf of the State.

- (c) With the exception of comments made about the audit to the State or other state agencies involved in the audit, the Contractor shall not make comments to any individual, including, but not limited to, any member of the media regarding the audit or audit workpapers, nor shall the Contractor comment on the State's actions regarding the audit, without the prior written consent of the State.
- (d) The Contractor acknowledges and understands that it is a misdemeanor for the State or any employee or former employee of the State to divulge in any manner not permitted by law, the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes, but is not limited to, records, documents, or information reviewed in connection with the audits that are not used in support of the final audit report. This prohibition also applies to any person or business entity and to the employees and former employees of this person or business entity that has assisted the State in the course of an audit or that has been furnished a draft copy of an audit report for comment and review (Government Code Section 8545.1).
- (e) The Contractor has reviewed and understands and agrees to be bound by the provisions of the Confidentiality/Nondisclosure Agreement, Encryption and Information Privacy Policy, and Security Agreement, which are attached hereto as, **Attachments C, D, and F**, respectively, and hereby incorporated into this Agreement. The Contractor agrees that each individual assigned by the Contractor to perform any services under this Agreement shall sign and adhere to the Confidentiality/Nondisclosure Agreement, Encryption and Information Privacy Policy Form, and Security Agreement prior to performing those services, which are attached hereto as **Attachments C, D, and F**, respectively.

#### 10. RECORD RETENTION

- (a) Any records obtained by the Contractor or any subcontractor or employee thereof during the course of the audit from any California public entity pursuant to the authority of the State are the exclusive property of the State and shall be returned to the State; however, the Contractor may retain copies of those records. All communications and workpaper records obtained, originated, or prepared by the Contractor pursuant to this Agreement, including papers, reports, charts, interview notes, and other documentation compiled by the Contractor pursuant to this Agreement, including the Contractor's administrative communications and records relating to this Agreement, shall become exclusive property of the Contractor. The Contractor shall make such documents available to the State upon request.
- (b) During the course of the audit, at the request of the State, the Contractor shall promptly return all originals of writings, including, but not limited to, electronic copies, that were obtained by the Contractor from any California public entity pursuant to the authority of the State in connection with the audit. Not later than 14 days following the completion of consulting services by the Contractor under this Agreement, the Contractor shall return all such original writings to the State. Notwithstanding the foregoing, the Contractor may retain copies of any such writings for workpaper purposes.
- (c) If the Contractor is requested pursuant to subpoena or other legal process to produce its documents or information relating to this engagement for the State in judicial or administrative proceedings to which the Contractor is not a party, Contractor shall immediately notify the State and take all appropriate legal actions to protect the documents and information from disclosure. The State shall reimburse the Contractor at Contractor's standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such requests.

- (d) In the event that the State receives a request pursuant to the California Public Records Act or applicable federal law for copies of the State's records in the possession of Contractor and relating to the work performed by the Contractor pursuant this Agreement, the Contractor shall assist the State in producing those copies of those records to the extent they are required to be released under state or federal law.
- (e) Except as otherwise provided by law, latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return of records as contemplated by this Paragraph 10 of this Agreement.
- (f) The Contractor shall retain all original work described in subparagraph (a) for a period of three (3) years from the date of publication of the audit. Upon completion of those three years, the Contractor shall consult with the State on whether those records shall be destroyed. If the State requests originals either during the course of the audit or during the three-year retention period, the Contractor shall promptly send the requested originals to the State.

#### **11. RIGHTS IN DATA**

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 held by the Contractor shall be the sole property of the Contractor.

#### **12. DATA PROTECTION PROTOCOLS**

The Contractor understands the sensitive nature of the information the Contractor will access while performing services under this Agreement and agrees to adhere to the State's data protection protocols, which are attached hereto as **Attachment D** and hereby incorporated by reference. The Contractor shall ensure that all assigned personnel and subcontractors performing work pursuant to this Agreement are aware of these protocols and they sign and return to the State the attached acknowledgement form. In addition, the Contractor agrees to adhere to the Security Agreement, which is attached hereto as **Attachment F** and hereby incorporated into this Agreement.

#### **13. ASSIGNMENT**

The Contractor may not transfer by assignment, subcontract, or novation the performance of this Agreement or any part thereof except with the prior written approval of the State as to each such assignment,

subcontract, or novation. All individuals performing services pursuant to this Agreement, whether directly assigned by the Contractor or as the result of assignment, subcontract, or novation, are subject to all of the provisions of this Agreement, including, but not limited to, data security, encryption and information privacy, confidentiality, and conflict of interest.

#### 14. AMENDMENT OF AGREEMENT

This Agreement may be amended by mutual consent of the State and the Contractor. An alteration of or variation from the terms of this Agreement is not valid unless made in writing and signed by the parties of this Agreement. If the State elects to exercise the one-year option period as provided in RFP No. 14-01, the parties shall amend this Agreement accordingly.

#### 15. NOTICE

(a) Notice to either party may be given by certified mail properly addressed. Postage must be fully prepaid to the address beneath the name of each respective party in subparagraphs (c) and (d) of this Paragraph 15. That notice shall be effective when received as indicated by post office records or, if deemed undeliverable by post office, that notice shall be effective nevertheless 15 days after mailing.

(b) Alternatively, notice may be given by personal delivery by any means whatsoever to the party at the address designated. That notice shall be deemed effective when delivered unless a legal holiday for state offices commences during said 24-hour period, in which case the effective time of the notice shall be postponed 24 hours for each intervening day.

(c) For the above purposes, the State's address:

California State Auditor, 621 Capitol Mall, Suite 1200, Sacramento, California 95814

(d) For the above purposes, the Contractor's address is:

\_\_\_\_\_

#### 16. TERMINATION

(a) The State may terminate this Agreement if it becomes necessary to end the Agreement prior to its conclusion, upon giving a 3-day advance notice in writing to the Contractor, as appropriate, in the manner herein specified. In that event, the Contractor agrees to use all reasonable efforts to mitigate any expenses or obligations hereunder.

(b) In the event of termination, the State shall, subject to the appropriation and the availability of funds for that purpose, pay the Contractor for all satisfactory services rendered prior to notice of termination and for all expenses incurred by the Contractor prior to termination that are not included in charges for service rendered prior to termination and that could not have been avoided by reasonable efforts of the Contractor.

(c) 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.

However, prior to such termination, the State shall notify the Contractor in writing of its intent to terminate this Agreement and shall afford the Contractor a reasonable period of time, but not less than five (5) business days, to cure the perceived deficiencies in the Contractor's performance. 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 in accordance with subparagraph (b) of this Paragraph 16 of this Agreement.

#### **17. COVENANT AGAINST GRATUITIES**

The Contractor warrants by signing hereon that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or by any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this warranty, the State may terminate this Agreement immediately, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items that the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this Paragraph 17 are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **18. CONFLICT OF INTEREST/INDEPENDENCE DISCLOSURE REQUIREMENTS**

- (a) Pursuant to the Conflict of Interest Code for the State formulated under the Political Reform Act of 1974, California Government Code Sections 81000 et seq., the State includes certain contractors to the State within the list of designated employees required to complete a Statement of Economic Interest (Form 700), unless upon a determination by the State that the range of duties that the Contractor is required to perform are limited in scope and, thus, the Contractor is not required to comply with the disclosure requirements. The State has made such a determination with regard to the performance of this Agreement. However, if for any reason the State determines otherwise during the term of the Agreement, the State may require any individual performing services under this Agreement to complete Form 700 and submit it to the State not less than 30 days from the date of this Agreement, or the request of the State, whichever is later.
- (b) This Paragraph 18 of this Agreement shall not be read to express any views or opinions of the State Auditor as to whether any individual providing auditing services under this Agreement is subject to the Political Reform Act of 1974. Any questions about the applicability of that Act to any such individual should be directed to the California Fair Political Practices Commission.
- (c) In all work performed under this Agreement, the Contractor and any subcontractors performing work pursuant to this Agreement shall agree to be free both in fact and appearance from personal, external, and organizational impairments to independence, as required by the general standards relating to independence contained in the *Government Auditing Standards*. In this regard, the Contractor shall complete, and have each individual assigned by the Contractor to perform services under this Agreement complete, the Independence Questionnaire, which is attached hereto as **Attachment K**, and hereby incorporated by reference into this Agreement. If any individual who is not listed in this agreement is assigned to perform services under this Agreement, the Contractor shall provide an additional letter, conforming to **Attachment K**, regarding that individual or individuals.

#### **19. WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the State to enforce at any time any of the provisions of this Agreement or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or any part thereof or the right of the State thereafter to enforce each and every such provision.

#### **20. DISPUTES**

- (a) Any dispute between the parties arising under or relating to the performance of this Agreement, which is not disposed of by agreement, shall be decided by the State and that decision shall be reduced to writing and mailed or otherwise furnished to the Contractor.
- (b) If the Contractor does not agree with the State's decision, either party may assert its other rights and remedies within this Agreement or within a California court of competent jurisdiction.

#### **21. LIMITATION OF LIABILITY**

- (a) The liability of the State under this Agreement shall not exceed the total amount payable under this Agreement, as set forth in Paragraph 4 of this Agreement.
- (b) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages.

#### **22. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY**

The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

#### **23. INDEMNIFICATION**

The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to injury to the person or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement. Such defense and payment will be conditional upon the following:

- (a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

- (b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

#### **24. LAW GOVERNING**

This Agreement, and any amendments to this Agreement, shall be governed by the laws of the State of California both as to interpretation and performance regardless of the specific location of any performance.

#### **25. AGREEMENT IS COMPLETE**

- (a) This Agreement represents the complete and exclusive statement of the agreements between the State and the Contractor with respect to the subject matter of this Agreement, and supersedes all prior agreements, proposals, representations, and other communications, written or oral, between the State and the Contractor regarding this subject matter. The State and the Contractor agree that there are no oral or written covenants, conditions, or agreements with respect to the subject matter of this Agreement except as set forth in this Agreement.
- (b) In the event of a conflict between the provisions of any Rider or other Attachment to this Agreement and the provisions of the General Terms and Conditions of this Agreement, the provisions of these General Terms and Conditions shall govern.

#### **26. PREVAILING CLAUSES**

In the event of a conflict between the provisions of any Rider or other Attachment to this Agreement and the provisions of the General Terms and Conditions of this Agreement, the provisions of these General Terms and Conditions shall govern.

#### **27. CAPTIONS**

The paragraph headings appearing in this Agreement have been inserted for convenience and for ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent to the paragraphs to which they pertain.

#### **28. PAYMENTS**

The Contractor will submit invoices on a monthly basis by the 10<sup>th</sup> of each month. The billings will include a separate itemized accounting of all charges, including appropriate original receipts for travel expenses and other administrative expenses. Invoices will be submitted in duplicate and sent to:

California State Auditor's Office, 621 Capitol Mall, Suite 1200, Sacramento, California 95814  
Attention: Accounting Office

## **29. MATERIALS DELIVERY**

All report, materials, and communications, except as provided in Paragraph 28 to this Agreement, are to be delivered to the Project Coordinator:

California State Auditor's Office, 621 Capitol Mall, Suite 1200, Sacramento, California 95814  
Attention: De Vose

## **30. FORCE MAJEURE**

Except for defaults of subcontractors, the Contractor and the State are not responsible for delays or failures to perform resulting from acts beyond the control of the nonperforming party. Those acts include, but are not limited to, acts of god, strikes, lockouts, riots, acts of war, epidemics, earthquakes, other disasters, governmental statutes or regulations imposed after the fact, and ancillary functions or utilities that are provided by a person or entity not a party to this Agreement. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and the default arises out of causes beyond the control of either the Contractor or the subcontractor, without the fault or negligence of either of them, the Contractor is not liable for damages for that delay or failure, unless the supplies or services to be furnished by the subcontractor were available from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

## **31. NONDISCRIMINATION AND FAIR EMPLOYMENT PRACTICES**

- (a) During the performance of this Agreement, the recipient, the Contractor, and its subcontractors, if subcontracting is otherwise permitted under this Agreement, shall not deny the Agreement's benefits to any person, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, ethnicity religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, and denial of family care leave. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination and harassment.
- (b) The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.), the regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, Sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.
- (c) The Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.
- (d) Recipient, the Contractor, and its subcontractors, if subcontracting is otherwise permitted by this Agreement, shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- (e) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract, if subcontracting is otherwise permitted under this Agreement.
- (f) The State may determine a willful violation of this Nondiscrimination and Fair Employment Practices provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which the Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the California Fair Employment and Housing Act and has issued an order, under Government Code Section 12970, which has become final, or obtained an injunction under Government Code Section 12973.
- (g) For willful violation of this Nondiscrimination and Fair Employment Practices provision, the State shall have the right to terminate this Agreement, and any loss or damage sustained by the State shall be paid for by the Contractor. Additionally, the State may deduct from any moneys due or that thereafter may become due to the Contractor, the difference between the price named in the Agreement and the actual cost thereof to the State.

### **32. TIME OF PERFORMANCE**

Time is of the essence for purposes of this Agreement including the performance of services under any schedule established under this Agreement.

### **33. WITHHOLDING ON PAYMENTS TO CALIFORNIA NONRESIDENTS**

Payments made to California nonresidents, including corporations, limited liability companies, and partnerships that do not have a permanent place of business in this state are subject to seven percent (7%) state income tax withholding (California Revenue and Taxation Code Section 18662).

Types of income subject to withholding include, but are not limited to, payments for services performed in California and payments of leases, rents and royalties for property (real or personal) located in California. No withholding is required on payments for goods.

The Franchise Tax Board may reduce the withholding if the seven percent (7%) will result in substantial overwithholding or waive the withholding if the payee has a current history of filing California returns and/or making estimated payments when due. For more information, or to request a waiver or reduced withholding rate, contact:

Nonresident Withholding Waiver Requests  
Nonresident Withholding Section MS F-265  
Franchise Tax Board  
PO Box 651  
Sacramento, CA 95812-0651  
Telephone: (916) 845-4900; Fax: (916) 845-4831

### **34. AGENCY LIABILITY**

The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation

of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

### **35. INSURANCE REQUIREMENTS**

- (a) Insurance companies must be acceptable to the State. If self-insured, review of financial information may be required and the Contractor will submit all requested documents to the State within five (5) days of the request. Coverage for both general negligence and professional liability must be in-force for the complete term of Agreement. If insurance coverage expires during the term of the Agreement, a new certificate must be received by the State at least ten (10) days prior to the expiration of this Agreement. Insurance policies shall contain a provision that states the coverage will not be cancelled without 30 days prior written notice to the State. The Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
- (b) If the Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such even, subject to the provisions of this Agreement.
- (c) The Contractor shall maintain general liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. The policy must include the State of California, its officers, agents, employees and servants as additional insure, but only insofar as the operations under the Agreement are concerned. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contact. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The Contractor shall provide proof of Professional Errors and Omissions Insurance covering any damages caused by an error, omission, or any negligent acts.

### **36. CERTIFICATE OF SPECIAL TERMS AND CONDITIONS**

The Contractor provided a certification of Special Terms and Conditions with its response to RFP No 14-01 which is attached hereto as **Attachment G** to this Agreement and incorporated herein by reference as though fully set forth in this Agreement.

### **37. USE OF \_\_\_\_\_ MEMBER FIRMS AND/OR THIRD-PARTY SERVICE PROVIDERS**

In connection with the performance of services under this Agreement and only to the extent permitted by the State and federal law, \_\_\_\_\_ may utilize the services of \_\_\_\_\_-controlled entities, \_\_\_\_\_ member firms and/or third-party service providers within and without the United States to provide, at the Contractor's direction, administrative and clerical support services to the Contractor; provided however that such services shall not include any word processing involving deliverables as described in this Agreement. Moreover, \_\_\_\_\_ may utilize third-party service providers within and without the United States to provide, at \_\_\_\_\_ direction, administrative and clerical support services to \_\_\_\_\_. Such member firms and third-party service providers shall be subject to all the provisions of this Agreement related to privacy, confidentiality, eligibility to conduct business with the State, and data security. Information provided to, and stored by, those firms and providers shall be provided in a secure manner, consistent with the terms of this Agreement and any Rider thereto.

### **38. WORKERS COMPENSATION INSURANCE**

The Contractor shall obtain, and keep in force during the term of this Agreement, workers' compensation insurance in conformity with applicable state law.

### **39. CERTIFICATE OF SPECIAL TERMS AND CONDITIONS**

The Contractor shall provide a signed certification of Special Terms and Conditions, which is attached hereto as **Attachment G** to this Agreement and hereby incorporated by reference.

### **40. RECYCLING CERTIFICATION**

The Contractor shall use, to the maximum extent economically feasible in the performance of services under this Agreement, recycled products. 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 section 12200 of the Public Contract Code, 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 section 12209 of the Public Contract Code. The Contractor may certify that the product contains zero recycled content. With respect to printer or duplication cartridges that comply with the requirements of section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code, § 12205).

### **41. DARFUR CONTRACTING ACT**

Pursuant to the Darfur Contracting Act of 2008, the Contractor is not a scrutinized company as defined under state law. The Contractor shall execute the Darfur Contracting Act Certificate, attached hereto as **Attachment H**, and hereby incorporated into this Agreement.

### **42. ANTITRUST CLAIMS**

The Contractor by signing this agreement hereby certifies that 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:
  - (i) "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.
  - (ii) "Public purchasing body" means the State or the subdivision or agency making a public purchase. (Gov. Code § 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 right, 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 Profession 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. (Gov. Code § 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 chapter 11 of division 5 of title 1 of the Government Code, 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 damage, 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. (Gov. Code § 4553.)
- (d) Upon demand in writing by the assignor, the assignee shall, within one year of 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 Gov. Code § 4554.)

#### **43. PRIORITY HIRING CONSIDERATIONS**

If this Contract includes services in excess of two hundred thousand dollars (\$200,000), the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance to Public Contract Code section 10353.

#### **44. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS**

- (a) If for this Contract, Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Gov. Code § 14841.)
- (b) If for this Contract, Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in the Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code, section 999.5(d); Gov. Code, § 14841.)

NOTE: ADDITIONAL TERMS AND CONDITIONS MAY APPLY DEPENDING ON THE PROPOSAL AND/OR THE PROPOSER.

**Attachments C, D, E, F, G, H, and K.**

**California State Auditor, Confidentiality/Nondisclosure Agreement**

The undersigned acknowledges and agrees, on behalf of or at the direction of the Contractor, that any records, documents, and information, or any draft or final audit report that the undersigned reviews or produces in connection with providing auditing services to the California State Auditor (State) relating a Statewide Single Audit of California audit work provided pursuant to State contract number \_\_\_\_\_ shall be subject to the terms of this Confidentiality/Nondisclosure Agreement (agreement). The undersigned acknowledges and agrees to all of the following:

- (a) The audit reports and records, documents, or information used in support of the reports that are made available to the Contractor or any subcontractors, or that are generated by the Contractor or any subcontractors, during the course of the audit, including, but not limited to all financial, statistical, proprietary, market sensitive, highly sensitive, personal, technical, and other information used in support of or contained in those reports, are confidential and shall be protected by the Contractor and any subcontractors from unauthorized use or disclosure, as described in this agreement. In providing that protection, Contractor and any subcontractors shall comply with this agreement and any other reasonable procedural requirements of the State that are provided in writing to the Contractor.
- (b) Except as required by law, legal process, or applicable professional standards, the Contractor and any subcontractors shall not publicly disclose data or disseminate the contents of any draft audit report or any records, documents, or information used in support of any draft audit report. Except as required by law or legal process, the Contractor and any subcontractors shall not publicly disclose data or disseminate the contents of the final audit report or any records, documents, or other information used in support of the audit report without the written permission of the State. Permission to disclose the contents of an audit report on one occasion on behalf of the State or to give testimony at a public hearing held by a legislative committee relating to the audit report shall not authorize the Contractor and any subcontractors to further disclose information in the report or to disseminate this information on any other occasion on behalf of the State.
- (c) With the exception of comments made about the audit to the State, the Contractor and any subcontractors shall not make comments to any individual, including, but not limited to, any member of the media regarding the audit, nor shall the Contractor and any subcontractors comment on the State's actions regarding the audit, without the prior written consent of the State.
- (d) The Contractor and any subcontractors acknowledge and understand that it is a misdemeanor for the State or any employee or former employee of the State to divulge in any manner not permitted by law, the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes, but is not limited to, records, documents, or information reviewed in connection with the audits that are not used in support of the final audit report. This prohibition also applies to any person or business entity and to the employees and former employees of this person or business entity that has assisted the State in the course of an audit or that has been furnished a draft copy of an audit report for comment and review (Government Code Section 8545.1).

\_\_\_\_\_  
Company/Firm Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### **Encryption and Information Privacy Policy**

#### **BACKGROUND**

Theft of portable computing devices, such as laptop computers, is a problem in the state and in private industry. Theft and other loss of portable computing equipment can lead to the compromise of confidential, sensitive, or personal data, which in turn can lead to privacy issues and costly follow-up activities.

The state continues to experience situations in which confidential, sensitive, or personal data is compromised when an unencrypted electronic device is lost, stolen, or sabotaged. Budget Letter 05-32 issued by the Department of Finance, requires encryption of state data that is confidential, sensitive, and personal when it is stored on portable computing devices (including, but not limited to, laptops and personal assistive devices) and/or portable electronic storage media (including, but not limited to, optical discs and flash memory storage devices). Management Memo 06-12 requires that all state entities be vigilant to protect personal, sensitive, or confidential information from inappropriate or unauthorized access, use or disclosure, regardless of media type, whether the entity is the custodian or the owner of the information. Protecting personal, sensitive, and confidential data is the responsibility of each individual employee.

Government Code Section 8545.2, grants the Bureau of State Audits a very broad right of access to the records of state agencies and other public entities it is directed to audit or investigate<sup>1</sup>. Additionally, the bureau may receive information from the private sector and agree to keep that information confidential. Since the bureau has “stand in their shoes authority” over auditee information and at times receives sensitive information from the private sector, the bureau must be vigilant in protecting personal, sensitive or confidential information from inappropriate or unauthorized access, use, or disclosure, regardless of media type. In addition, the bureau is the owner of sensitive information, such as personnel records, and must also be vigilant in protecting those records.

This policy is not intended to limit the bureau’s right to access the records of public entities. Rather, it is intended to establish protocols to minimize the risk that those records are inadvertently disclosed. It may be helpful to discuss certain aspects of this policy with an auditee at the entrance conference (e.g., our policy that we require electronic data, whether transmitted electronically or personally, to be encrypted prior to transmittal).

Additionally, because no employee is expected to know every state and federal privacy law, this policy requires bureau employees to exercise sound judgment in assessing the sensitive nature of information by asking themselves whether, if the information related to them, they would want it maintained in a secure manner. Where an employee is in doubt about the sensitive nature of information, the employee should err on the side of caution.

#### **POLICY**

Whether the bureau is the custodian or the owner of the confidential information, all employees must ensure the security and integrity of that information. Individuals of non-government entities with whom the bureau has contracted are also included under this mandate (Civil Code Section 1798.19). This policy pertains to all information assets, including, but not limited to, electronic assets and paper assets. The bureau has two positions

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<sup>1</sup> Although this policy refers to “audits” and “auditees,” it applies equally to investigations and the agencies and departments subject to our investigative authority.

that have primary responsibility for monitoring and enforcing these policies: the Information Security Officer (manager, Information Technology Unit), and the Information Privacy Officer (legal counsel).

All bureau employees are responsible for providing encryption, or equally effective measures, for all personal, sensitive, or confidential information that is stored on any portable electronic storage media (including, but not limited to, optical discs and flash memory storage devices) and on portable computing devices (including, but not limited to, laptops handheld and tablet computers).

This policy applies to all state data, including media owned by employees, vendors, contractors, or researchers, regardless of format or medium. Where state-owned confidential, sensitive, and/or personal information exists, it must not be allowed on any portable equipment or media that is not protected.

Personal, sensitive, or confidential information stored on shared drives on a local area network (LAN) is not subject to this policy because information stored on these drives is not considered portable.

#### ***RULES OF CONDUCT***

The following is an overview of the rules of conduct the bureau follows to protect personal, sensitive, and confidential data:

##### ***Responsibilities of all staff:***

- All electronic transmittals of personal, sensitive, or confidential information between bureau staff and auditees or contractors, including editors, must be encrypted.
- Staff must limit the gathering of data to only what is relevant and necessary, redact extraneous information whenever possible and, where appropriate, label workpapers as nonpublic.
- Because we are often unaware of whether auditee files contain personal, sensitive or confidential information at the time we receive it, before personally obtaining electronic data from auditees, staff should work with the auditee's IT Unit and the bureau's IT Unit to ensure that the data is encrypted before staff accepts custody. The bureau has external hard drives available for this purpose.
- Staff may work only with secure servers while away from the office.
- Staff must ensure that all hard drives and other storage devices and external media, including flash drives, are encrypted.
- Staff must follow the bureau's protocols for password protection, which requires at least eight characters, including numbers and symbols, and changing passwords at least every 42 days. Staff should employ "strong" passwords. A strong password conforms to the following parameters:
  1. Is never shared with anyone else
  2. Is over 8 characters in length
  3. Uses at least 1 character from each of the following character types:
    - a. Lower case letter (e.g. a)
    - b. Upper case letter (e.g. B)
    - c. Number (e.g. 3)
    - d. Punctuation mark or symbol (e.g. \$)
  4. Is easy to remember, but not easily guessable or related to staff (such as SSN's, addresses, or phone numbers)
- Staff assigned to audits that will involve gathering personal and confidential information, as defined below, must meet with the Information Security Officer (ISO) and the Information Privacy Officer (IPO) prior to gathering the data. Investigations staff must meet annually with the ISO and IPO.

- The team's need to collect personal, confidential, or sensitive information, as defined below, should be discussed at the kick-off meeting and thereafter if an audit requires the late collection of information of that nature.
- All staff with access to personal and confidential information must certify in writing, prior to accessing such data, that they are aware of the nature of the data, and have reviewed, understand, and agreed to adhere to the Rules of Conduct as specified in this section. This will occur at the meeting with the ISO and IPO.
- Each team leader is responsible for developing and updating a written list of staff (including obtaining the signatures of those staff), who are authorized to access any personal data on any audit.
- Laptops left in hibernation or sleep mode, or not turned off at all, are the most vulnerable to attack. Staff must completely shut down any computer equipment containing personal, sensitive, or confidential data if they will be away from their work areas overnight or for several hours during the business day. This requires that employees who leave the office without turning off their computers return to the office to shut down their computers before ending the work day. While in the office, when staff leave their desks for short periods, they must comply with state policy of locking their computers by simultaneously pressing the Ctrl-Alt-Delete keys. While the office is typically well-attended during the day, staff should be mindful that their coworkers are not responsible for guarding staff computers. Therefore, staff should exercise sound judgment when leaving computer terminals and work stations, particularly when non-bureau employees are present or may have access to bureau computers. Additionally, when working out of the office, employees should completely shut down computers while away from their desks for 30 minutes or more.
- Staff must use secure methods to transport data (i.e. carry-on luggage when traveling, or other secure transmittal methods).
- Staff may only use bureau computer equipment to receive, store, and transmit electronic information.
- Staff must preserve the "chain of custody" over personal and confidential data, whether electronic or hard copy. Chain of custody means staff is constantly aware of and has carefully documented the location of, and names of those responsible for, the data from the time it leaves the custody of an auditee until we have completed our work with the data. Depending on the type of information involved, preserving chain of custody may require that witnesses be present when information is exchanged or accounted for. It also requires that staff carry-on, not check, bureau equipment and information when travelling.
- Staff must transfer records gathered from state agencies and stored on laptops to the bureau's network drives as soon as practicable.
- When working out of the office, staff must secure all workpapers and other personal, sensitive, or confidential materials, regardless of format or media, when away from their desks. When working in the office, staff must secure all materials containing personal and confidential data before leaving the office at night, or prior to leaving the office when it is possible that the employee may not return to work that day. Additionally, when management has determined that only certain employees will have access to information because of its sensitive nature, staff must ensure that such information is secured whenever it is left unattended by those authorized to access it, even during business hours and while working in the office. Staff should use locked file cabinets, locking foot lockers, and, where available, manual door locks for purposes of securing workpapers and materials. Team leaders should make use of keys available for team rooms, obtaining them from the receptionist and returning them after use of the room.
- Any breach of security by the bureau or an auditee must be immediately reported to the bureau's ISO and IPO. Additionally, upon identifying a potential violation of this policy, staff must promptly notify the bureau's ISO and IPO about the potential security risk. When directed to do so, staff, with assistance from legal counsel, must prepare a management letter that discloses the nature of the security risk the bureau has identified.
- Staff, assisted by the Information Technology Unit (IT Unit) must shred all backup, hard copy, or personal, sensitive, and confidential materials when they are no longer needed.

- Staff, assisted by the IT Unit, must ensure that personal, sensitive or confidential data on discs, flash drives, and other external media, are overwritten before discs are disposed. Staff are required to sign and complete Form AUD-310 at the end of an audit assignment.
- Staff, assisted by the IT Unit, is responsible for ensuring that the unused space on their hard drives is overwritten at the end of the audit. Staff is required to sign and complete Form AUD-310 at the end of an audit assignment.
- Staff, assisted by the IT Unit, is responsible for ensuring that the bureau's electronic information security systems limit access to personal, sensitive, or confidential information to those who need access or those who have a right of access, as appropriate.

**Responsibilities of the bureau's Information Technology Unit:**

- The bureau's IT Unit ensures that all computers and hard drives are overwritten when they are discarded.
- The bureau's IT staff certifies, in writing, that it is responsible for (1) implementing the necessary technical means to preserve the security, privacy, and integrity of the bureau's information assets and manage the risks associated with those assets and (2) acting as a custodian of information per SAM Section 5315.1.

**Responsibilities of other bureau staff:**

- A deputy state auditor must confirm that a departing employee has certified, in writing, that all confidential, personal, or sensitive data handled by the departing employee has been properly destroyed, transferred to a supervisor, or otherwise secured before the employee proceeds with the final checkout.
- Laptops and other electronic devices assigned to bureau staff, as well as work areas, are subject to periodic inspection by the ISO to ensure compliance with these protocols. As part of the bureau's ongoing audit and evaluation process to ensure adherence to the information privacy program, the bureau's ISO or delegate will randomly perform inspections of all workspaces and devices.
- The bureau's ISO and IPO will investigate all breaches and handle any notifications that may be required, as indicated in the bureau's information privacy guidelines.
- The ISO and the IPO will conduct mandatory annual privacy and security training classes for all staff. The State Auditor, or designee, annually certifies that 100% of the staff has attended the training.

**DEFINITIONS**

For the purposes of this policy:

Personal information is information that identifies or describes an individual, including, but not limited to, name, physical description, home address, home telephone number, education, financial matters, and medical or employment history, as well as statements made by or attributed to an individual (See Civil Code Section 1798.3). Personal information is particularly sensitive and must be protected from inappropriate access, use, or disclosure and made accessible to data subjects upon request. Additional examples of personal information are contained in the statutes listed below, which are not intended to constitute an exhaustive list:

- Notice-triggering personal information – specific items or personal information, regardless of media or format, (name plus Social Security Number, driver's license/California identification card number, financial account number, medical information, or health insurance information) that may trigger a requirement to notify individuals if an unauthorized person acquires it (See Civil Code Section 1798.29);
- Protected Health Information – individually identifiable information regarding a patient's medical history, mental or physical condition, or treatment created, received, or maintained by such organizations as health care payers, pharmaceutical companies, health care providers, health plans, and contractors to these entities, in electronic or physical form. State law requires special precautions to protect such data from unauthorized use, access or disclosure (See Confidentiality of Medical Information Act, Civil Code Section 56 et seq. and the Patients' Access to Health Records Act, Health and Safety Code Sections 123100-123149.5); and

- Electronic Health Information – individually identifiable health or health billing information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. Federal regulations require state entities that are health plans, health care clearinghouses, or health care providers that conduct electronic transactions ensure the privacy and security of electronic protected health information from unauthorized use, access, or disclosure (See Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. parts 160 and 164). HIPAA imposes stiff penalties and requires notice to consumers if protected data is accessed by unauthorized persons.

Sensitive information is information maintained by state agencies that requires special precautions to protect it from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive information may be either public or confidential. It is information that requires a higher than normal assurance of accuracy and completeness. Thus the key factor for sensitive information is that of integrity. Typically, sensitive information includes records of agency financial transactions and regulatory actions.

Confidential information is information maintained by state agencies that is exempt from disclosure under the provisions of the California Public Records Act (Government Code Sections 6250-6265) or other applicable state or federal laws. For purposes of this policy only, bureau-generated materials and data that do not contain any person's personal or confidential data is not confidential.

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The Contractor and any subcontractors shall comply with the State Auditor's policy on data encryption and information privacy (see attached policy). Please sign the certification below. If you have any questions or concerns regarding this policy, please contact Karl Okamoto, Information Security Officer, or Stephanie Ramirez-Ridgeway, Information Privacy Officer.

\_\_\_\_\_  
Company/Firm Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Working Paper Standards**

**Written Report and Supporting Evidence:**

The contractor shall prepare working papers in support of its written report in accordance with *Government Auditing Standards*, as issued by the Comptroller General of the United States and shall deliver copies of all working papers to the State Auditor as specified in Paragraph 10 of the General Terms and Conditions of this Agreement. The contractor shall ensure that it gathers and provides sufficient, competent, and relevant evidence in support of its report so that an independent person could review the work and reach the same conclusions that the contractor reached. Working papers shall include sufficient cross-references as well as all documents that support the contractor's written report.

**Security Agreement**

**Recitals**

- A. Under the terms of the Agreement to which this **Attachment F** is attached, the Contractor and any approved subcontractors and assigned employees of the Contractor and any subcontractors, through the State, will have access to certain records that are subject to the California Information Practices Act of 1977 (Secs. 1798-1798.78, Cal. Civ. C.) (the "IPA").
- B. Pursuant to the terms of this **Attachment F**, the State and the Contractor wish to satisfy certain standards and requirements relating to the application of state security standards to certain information obtained from state agencies that are covered by HIPAA, some of which may constitute Protected Health Information ("PHI") or be covered by the IPA (i.e., "personal information" as defined in Sec. 1798.82(e), Cal.Civ.C. and referred to in this **Attachment F** as "personal data"). The State and the Contractor agree to comply with applicable law and professional standards in connection with the use and disclosure of PHI and personal information under the Agreement. Pursuant to the terms of this **Attachment F**, the State and the Contractor wish to satisfy certain standards and requirements relating to the application of state security standards to certain information obtained from state agencies that are covered by the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (the "HIPAA regulations"), some of which may constitute Protected Health Information ("PHI") or be covered by the IPA (i.e., "personal information" as defined in Sec. 1798.82(e), Cal.Civ.C. and referred to in this **Attachment F** as "personal data"). The State and the Contractor agree to comply with applicable law and professional standards in connection with the use and disclosure of PHI and personal information under the Agreement. The State and the Contractor acknowledge that neither the State nor the Contractor qualify as a Business Associate, as that term is defined under the HIPAA regulations, to the state agencies disclosing information to the Contractor or to each other. The State further acknowledges and agrees that the all of the various references to HIPAA and the HIPAA regulations are intended only to establish a level of data protection that is comparable to HIPAA to the extent such level of protection is required by applicable state and federal law, and shall not be construed in a manner to demonstrate or suggest that Contractor shall act as a Business Associate in connection with the performance of the Agreement.
- C. Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time. PHI covered under this **Attachment F** is limited to information that the Contractor obtains or creates in the performance of services hereunder for the State. "Personal data" covered under an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history, including statements made by, or attributed to, the individual, as defined by the IPA (Sec. 1798.3(a), Cal. Civ. C.) that the Contractor obtains or creates in the performance of services hereunder for State.

- D. "Security Incident" on master form means the unauthorized access, use, disclosure, modification, or destruction of PHI, personal data in electronic or paper format, covered under this **Attachment F**.
- E. As set forth in this **Attachment F**, the Contractor is the Contractor of the State that provides services, arranges, performs or assists in the performance of functions or activities on behalf of the State and creates, receives, maintains, transmits, uses or discloses PHI, and any subcontractors or persons assigned by the Contractor to perform services under an Agreement with the State Auditor.
- F. The State and the Contractor desire to protect the privacy and provide for the security of PHI or personal data created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulation and other applicable laws.
- G. The purpose of the **Attachment F** is to satisfy certain standards and requirements of HIPAA and HIPAA regulations and the IPA.
- H. The terms used in this Attachment, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations or the IPA.

In exchanging information pursuant to this Agreement, the parties agree as follows:

#### 1. Permitted Uses and Disclosures of PHI or Personal Data by Contractor

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this **Attachment F**, the Contractor may use or disclose PHI or personal data only to perform functions, activities or services specified in this Agreement, for, or on behalf of the State, provided that such use or disclosure would not violate the HIPAA regulations, if done by the State or the covered entity that has custody of the protected data.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this **Attachment F**, the Contractor may:
  - 1) **Use and disclose for management and administration.** Use and disclose PHI or personal data for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is or reasonably should be aware that the confidentiality of the information has been breached.
  - 2) **Provision of Data Aggregation Services.** Use PHI or personal data to provide data aggregation services to the State. Data aggregation means the combining of PHI or personal data created or received by the Contractor on behalf of the State with PHI or personal data received by the Contractor in its capacity as the Contractor of another covered entity, to permit data analyses that relate to the health care operations of the State.
  - 3) **Violations of Law.** Use and disclose PHI or personal data if the Contractor has a legal obligation to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1); or other applicable law, when the Contractor has a legal obligation to do so.

## 2. Responsibilities of Contractor

The Contractor agrees, in connection with its services hereunder in the State of California:

- A. **Nondisclosure.** Not to use or disclose PHI or personal data other than as permitted or required by this **Rider E** or as required by law.
  
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI or personal data, including electronic PHI or personal data, that it creates, receives, maintains, uses or transmits on behalf of the State hereunder; and to prevent use or disclosure of PHI or personal data other than as provided for by this **Attachment F**. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. The Contractor will provide the State with its current and updated policies. The State acknowledges and agrees that those policies are proprietary and therefore exempt from disclosure under the California Public Records Act (Secs. 6254.15; 6254(k), Cal. Gov. C.) and that the public interest would not be served by disclosure of such policies (Sec. 6255, Cal. Gov. C.). If the State receives any request for disclosure of those policies from any source in any form, including but not limited to the California Public Records Act, subpoenas, or any other discovery requests, the State will notify the Contractor, in a timely manner, so that the Contractor may take appropriate action to prevent disclosure. The State agrees not to disclose such policies unless required by court order.
  
- C. **Security.** To take the reasonable steps necessary to ensure the continuous security of all computerized data systems and paper documents containing PHI or personal data. These steps shall include, at a minimum:
  - 1) Complying with all of the data system security precautions listed in this **Attachment F** or in an Exhibit attached to this Agreement; and
  - 2) Compliance by the Contractor's engagement team hereunder and the technology tools (hardware, software and related infrastructure) used by the Contractor's engagement team hereunder to deliver the services hereunder with the State's Memo ADM-06-02 and Budget Letter 05-32, which are attached hereto and hereby incorporated by reference. Notwithstanding the foregoing, the Contractor's engagement team hereunder shall use encryption to protect PHI and personal data in its laptops, portable electronic storage media and members of the Contractor's engagement team hereunder shall use encrypted email in any emails sent by them over the Internet which contain PHI or personal data; and
  - 3) Not leaving PHI or personal data unattended in vehicles, offices, or other places. In the evening, all offices in which PHI or personal data are present should be locked and laptops, portable devices and paper documents containing PHI or personal data should be locked in file cabinets.

The Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with State. The Contractor agrees to provide contact information for the Security Officer to the State and to notify the State in writing of any change to the Security Officer or the Security Officer's contact information.

- D. Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of PHI or personal data by the Contractor or its subcontractors in violation of the requirements of this **Attachment F**.
- E. Contractor's Agents.** To ensure that any agents, including subcontractors, to whom the Contractor provides PHI or personal data received from or created or received by the Contractor on behalf of the State hereunder, agree, to the same restrictions and conditions that apply to the Contractor with respect to such PHI or personal data, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI or personal data and to incorporate, when applicable, the relevant provisions of this **Attachment F** into each subcontract or subaward to such agents or subcontractors.
- F. Availability of Information to the State.** Nothing in this **Attachment F** is intended to limit or otherwise modify the State's right of access as provided under Chapter 6.5 (commencing with 8543) of Title 2 of the California Government Code.
- G. Amendment of PHI or personal data and Access to PHI.** To make any amendment(s) to PHI contained in a Designated Record Set held by the Contractor that the State directs or agrees to pursuant to 45 CFR Section 164.526, in the reasonable time and manner designated by the State. Within a reasonable time after a request by State for access to PHI about an Individual contained in a Designated Record Set, Contractor shall make available to State such PHI as required by 45 CFR Section 164.524. Within a reasonable time after a request by State, the Contractor shall make available information related its disclosure of PHI as required by 45 CFR Section 164.528.
- H. Internal Practices.** To make the Contractor's internal practices, books and records relating to the use and disclosure of PHI or personal data received from any agency of the State through the State, or created or received by the Contractor on behalf of the State hereunder, available to the State or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Secretary, for purposes of determining the State's compliance with the HIPAA regulations.
- I. Documentation of Disclosures.** To document and make available to the State such disclosures of PHI or personal data, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI or personal data, in accordance with 45 CFR 164.528 or make disclosure under the IPA.
- J. Notification of Breach.** During the term of this Agreement, the Contractor agrees to do the following with respect to a Security Incident on master form involving PHI or personal data in electronic or paper format (referred to in this section 2(J) as a "breach") by the Contractor:
- 1) Discovery of Breach.** In the event of a Security Incident on master form involving PHI or personal data in electronic or paper format, notify the State and the affected agency of the State in accordance with, and otherwise comply with the applicable requirements of, Section 1798.82 of the California Civil Code. Notification shall be provided to the State contract manager, the Privacy Officers of the State and of the covered entity. The State is responsible for providing the Contractor with the contact information for the covered entity having custody of the information involved in the breach.

If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI or personal data, notification shall be provided by calling the State's Privacy Officer. The Contractor shall take prompt corrective action to mitigate, to the extent practicable, any risks or damages involved with the breach and to protect the operating environment and Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

**2) Investigation of Breach.** To immediately investigate the breach of PHI or personal data. As soon as practical, but not less than within three (3) business days of the discovery or notification of the breach in the security of the data whose PHI or personal data was or is reasonably believed to have been acquired by an unauthorized person, to notify the State's contract manager(s), the State's Privacy Officer, and the State Information Security Officer of, as well as the Privacy Officer and the Information Officer of the state agency who owns the PHI or personal data (the names of the Privacy Officers and information Officers for each state agency subject to Audit under this Agreement shall be provided by the State upon execution of this **Attachment F** of, to the extent known:

i. What data elements were involved and the extent of the data involved in the breach, as the Contractor may reasonably be able to determine within three business days.

As soon as practical, but not less than within seven (7) business days of the confirmation of the existence of the breach, to notify the State's contract manager, the State's Privacy Officer, and the State's Information Security Officer of, to the extent known:

i. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or personal data (if known to the Contractor),

ii. A description of where the PHI or personal data is believed to have been improperly transmitted, sent, or utilized,

iii. A description of the probable causes of the improper use or disclosure.

**3) Report.** To provide a written report of the investigation to the State's contract managers, the State's Privacy Officer, and the State's Information Security Officer within fifteen (15) business days of the discovery or notification of the breach in the security of the data whose personal information was acquired by an unauthorized person. The report shall include, but not be limited to, the information specified above, as well as a corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the State discloses all or a portion of this information to a covered entity that has custody of the PHI or personal data, the State will clearly indicate, in writing, what information is exempt from disclosure under the California Public Records Act and will request that the covered entity promptly notify the State and the Contractor as indicated in this subparagraph in the event the covered entity gets a request for that information (including but not limited to California Public Records Act, subpoenas, or any other discovery requests) from any third party, and not disclose such information unless required by court order.

The Contractor and the State recognize and agree that the significant number of meaningless attempts by third parties to, without authorization, access use, disclose, modify or destroy PHI or personal data will make a real-time notification requirement of these activities formidable for the Contractor. Therefore, the Parties agree that this Agreement shall constitute notice to State of

unsuccessful attempts to access, use, disclose, modify, or destroy PHI or personal data or interfere with the Contractor systems operations in an information system. By way of example, the Parties consider the following to be illustrative of unsuccessful security incidents when they do not result in actual unauthorized access, use, disclosure, modification or destruction of PHI or personal data or interference with an information system: (i) pings on the Contractor’s firewall, (ii) port scans, (iii) attempts to log on to a system or enter a database with an invalid password or username, (iv) denial-of-service attacks that do not result in a server being taken off-line, and (v) Malware (worms, viruses, etc.).

- 4) Notification of Individuals.** To reimburse the State of California for the costs of notifying individuals of the breach as set forth in this Section 2(J)(4) when state or federal law requires such notification. For a breach caused by the Contractor, the Contractor agrees to reimburse the State of California for the reasonable costs it incurs in providing the notifications required by 45 CFR Part 164, Subpart D, and applicable state law and the costs of credit monitoring to affected individuals following such a breach, if consistent with established practices. In order to receive reimbursement, the State must provide the Contractor with a written accounting of the State’s actual costs, including pertinent documents, such as copies of receipts or invoices.
- 5) State Contact Information.** To direct communications to the above referenced State staff, the Contractor shall initiate contact as indicated herein. The State reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Attachments.

State Contract Manager	State Officer	State Information Security Officer
De Vose Deputy State Auditor California State Auditor’s Office 621Capitol Mall, Suite 1200 Sacramento, CA 95814 Telephone: (916) 445-0255 <a href="mailto:DeV@auditor.ca.gov">DeV@auditor.ca.gov</a>	Stephanie Ramirez-Ridgeway Senior Staff Counsel California State Auditor’s Office 621Capitol Mall, Suite 1200 Sacramento, CA 95814 Telephone: (916) 445-0255 <a href="mailto:stephanier@auditor.ca.gov">stephanier@auditor.ca.gov</a>	Karl Okamoto IT Manager California State Auditor’s Office 621Capitol Mall, Suite 1200 Sacramento, CA 95814 Telephone: (916) 445-0255 <a href="mailto:karlo@auditor.ca.gov">karlo@auditor.ca.gov</a>

**K. Employee Training and Discipline.** To train employees performing work under the Agreement on privacy and security requirements and use other reasonable measures to ensure compliance with the requirements of this **Attachment F** Contractor employees with regard to the use or disclosure of PHI or personal data, and to comply with the applicable requirements of Section 1798.19 of the California Civil Code.

**3. Obligations of the State.** The State agrees to:

**A. Notice of Privacy Practices.** Provide the Contractor with the Notice of Privacy Practices that the covered entity that has custody of the PHI or personal data produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

- B. *Permission by Individuals for Use and Disclosure of PHI or personal data.*** Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose PHI or personal data, if such changes affect the Contractor's permitted or required uses and disclosures.
- C. *Notification of Restrictions.*** Notify the Contractor of any restriction to the use or disclosure of PHI or personal data that the State has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI or personal data.
- D. *Requests Conflicting with HIPAA Rules.*** Not request the Contractor to use or disclose PHI or personal data in any manner that would not be permissible under the HIPAA regulations if done by the State.
- E. *Encryption.*** Electronic PHI transmitted or otherwise transferred from State to the Contractor must be encrypted by a process that renders the electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of Section 13402 of the Health Information Technology for Economic and Clinical Health Act, Public Law 111-5 and any implementing guidance.
- F. *Minimum Necessary.*** The State shall not transfer to the Contractor more than the minimum personal data or PHI to Contractor that is necessary for Contractor to perform services for the State under the Agreement.

#### **4. Audits, Inspection and Enforcement**

In the event of a security incident, the Contractor shall make available to State persons qualified to address detailed inquiries concerning the Contractor's policies and procedures on the privacy and security of personal data or PHI. The Contractor and the State shall meet and discuss, in good faith, a mutually agreeable approach to the inspection by the State, during normal business hours and with the Contractor personnel present, of the Contractor's physical practices in the State of California with regard to the safeguarding of any PHI or personal data received by the Contractor from the State pursuant to this Agreement. Nothing herein authorizes the State to access information of, or relating to, other clients of the Contractor.

In the event that the State wishes to have any person who is not a State employee participate in such inspection or follow-up thereto, the State will notify the Contractor in writing of the identity and agency or corporate affiliation of such personnel and shall provide the Contractor with a reasonable period of time (but not less than three (3) business days) in which the Contractor may object, in writing, to the participation of such personnel and the reasons therefore, including but not limited to, the fact that such personnel are, or are affiliated or employed by, a business competitor of the Contractor. The State agrees that it will not include personnel objected to by the Contractor in any such inspection or follow-up. The State also agrees that any non-State employee who participates in the inspection, or follow-up thereto, shall be required to sign a Non-Disclosure Agreement in a form satisfactory to the Contractor and to provide a copy of same to the Contractor before participating in the inspection, or follow-up thereto. The Contractor shall promptly mitigate, to the extent practicable, any material violation of any provision of this **Attachment F** and shall, upon request, confirm to the State Privacy Officer that the mitigation has been implemented. The State agrees that any paper or electronic records it reflects regarding the Contractor's mitigation efforts are confidential and exempt from disclosure under the California Public Records Act. If the State receives any request for disclosure of this information from any source in any form, including but not limited to the California Public Records Act, the Contractor may take appropriate action to prevent disclosure. The State agrees not to disclose such policies unless required by court order.

The fact that the State inspects, or fails to inspect, or has the right to inspect, the Contractor's computers under this subparagraph does not relieve the Contractor of its responsibility to comply with this Agreement, nor does State's:

- A. Failure to detect or;
- B. Detection, but failure to notify the Contractor or require the Contractor's remediation of any unsatisfactory practices constitutes acceptance of such practice or a waiver of the State's enforcement rights under this Agreement and this **Attachment F**.

## 5. Termination

- A. **Termination for Cause.** Upon the State's knowledge of a material breach of this Attachment by the Contractor, the State shall:
  - 1) Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement if the Contractor does not cure the breach or end the violation within the time specified by State;
  - 2) Immediately terminate this Agreement if the Contractor has breached a material term of this **Attachment F** and cure is not possible; or
  - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** The Contractor will notify the State if it is named as a defendant in a criminal proceeding for a violation of HIPAA. The State may terminate this Agreement if the Contractor is found guilty of a criminal violation of HIPAA. The State may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, the Contractor shall return or destroy all other copies of PHI or personal data received from the State hereunder (or created or received by Contractor on behalf of the State) that the Contractor still maintains in any form, and shall retain no copies of such PHI or personal data or, if return or destruction is not feasible, shall continue to extend the protections of this **Attachment F** to such information, and shall limit further use of such PHI or personal data to those purposes that make the return or destruction of such PHI or personal data infeasible. This provision shall apply to PHI or personal data that is in the possession of subcontractors or agents of the Contractor. The State acknowledges that *Government Auditing Standards* may prohibit the Contractor to return or destroy PHI or personal data in its workpapers.

## 6. Miscellaneous Provisions

- A. **Disclaimer.** The State makes no warranty or representation that compliance by the Contractor with this **Attachment F**, HIPAA or the HIPAA regulations will be adequate or satisfactory for the Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or will be secure from unauthorized use or disclosure. The Contractor is solely responsible for all decisions made by the Contractor regarding the safeguarding of PHI or personal data.

- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this **Attachment F** may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI or personal data. Upon the State's request, the Contractor agrees to promptly enter into negotiations with the State concerning an amendment to this **Attachment F** embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. The State may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) The Contractor does not promptly enter into negotiations to amend this **Attachment F** when requested by the State pursuant to this Section or
  - 2) The Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI or personal data that the State in its sole discretion deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Without waiving any rights or defenses, the Contractor agrees to make itself reasonably available, at the billing rates that apply for the service performed by Contractor under the Agreement, to the State to testify as witnesses, or otherwise in the event of litigation or administrative proceedings being commenced against the State, its directors, officers, or employees, based on claimed violation of HIPAA, HIPAA regulation or other laws relating to security or privacy, and such claimed violation allegedly involves inaction or action by the Contractor, except where the Contractor or its subcontractor, employee, or agent is a named adverse party or where cooperation would impair the Contractor's independence.
- D. **No Third-Party Beneficiaries.** Nothing expressed or implied in the terms and conditions of this **Attachment F** is intended to confer, nor shall anything herein confer, upon any person other than the State or the Contractor and their respective successors or assignees, any rights, remedies, obligations, or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this **Attachment F** shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this **Attachment F** shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this **Attachment F** to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of the Contractor under Section 6.C of this **Attachment F** shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- I. **Integration.** This **Attachment F** embodies and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

- J. **Effective Date.** This **Attachment F** is effective upon the date of its execution by authorized representatives of both the State and the Contractor and shall remain in effect for the duration of the Agreement to which it is appended.

***Certification of Special Terms and Conditions***

1. **STATEMENT OF COMPLIANCE:** The Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990 (a-f) and Title 2, California Code of Regulations, Section 8103.
2. **DRUG-FREE WORKPLACE CERTIFICATION:** By signing this contract, the Contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the Contractor or grantee will comply with the requirements of the Drug-Free Act of 1990 (Government Code Section 8350 et seq.) 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, as required by Government Code, Section 8355 (a).
  - b. Establish a Drug-Free Awareness Program as required by Government Code, Section 8355 (a)(2) to inform employees about all of the following:
    - 1) The dangers of drug abuse in the workplace;
    - 2) The person's or organization policy of maintaining a drug-free work workplace;
    - 3) Any available counseling, rehabilitation and employee assistance program; and
    - 4) Penalties that may be imposed upon employees for drug abuse violations.
  - c. Provide, as required by Government Code, Section 8355 (a)(3), that every employee who works on the proposed contract:
    - 1) Will receive a copy of the company's drug-free policy statement; and
    - 2) Will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the Contractor or grantee may be ineligible for award or any future state contracts if the State determines that any of the following has occurred: (1) the Contractor or grantee has made false certification or (2) violates the certification by failing to carry out the requirements as noted above.

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** By signing hereon the Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because

of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with Public Contract Code, Section 10296.

4. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
5. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

#### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

1. LABOR CODE/WORKERS' COMPENSATION: The Contractor needs to be aware of the provisions which require every employer to be insured against liability for Workers' 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).
2. AMERICANS WITH DISABILITIES ACT: The 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.)
3. 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.
4. CHILD AND FAMILY SUPPORT COMPLIANCE CERTIFICATION: The Contractor acknowledges the policy of the State of California, as set forth in Section 7110 of the California Public Contract Code, to require compliance with state and federal laws relating to child and family support enforcement. By signing this Agreement, the Contractor certifies that, to the best of the Contractor's knowledge, the Contractor is in full compliance with all earnings assignment orders for child support or family support affecting the Contractor's employees.
5. CORPORATE QUALIFICATION TO DO BUSINESS IN CALIFORNIA:

When agreements are to be performed in the State by corporations, the contracting agencies will verify that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

"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 an incorporated contractor performing within the state not be subject to the franchise tax.

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.

6. 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 of 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 laws relating to air or water pollution.
  
7. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

\_\_\_\_\_  
Company/Firm Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Darfur Contracting Act Certification**

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476. Therefore, to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

<i>Company/Vendor Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Initialing (for Options 1 or 2)</i>	

1. \_\_\_\_\_ We do not currently have, and have not had within the previous  
 Initials three years, business activities or other operations outside of the United States.

**OR**

2. \_\_\_\_\_ We are a scrutinized company as defined in Public Contract Code  
 Initials section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

**OR**

3. \_\_\_\_\_ We currently have, or we have had within the previous three years,  
 Initials business activities or other operations outside of the United States,  
 + certification but we certify below that we are not a scrutinized company  
 below as defined in Public Contract Code section 10476.

**CERTIFICATION For # 3.**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>

**PROPOSAL/PROPOSER CERTIFICATION SHEET**

This Proposal/Proposer Certification Sheet must be signed and returned along with all the "required attachments" as an entire package with original signatures. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions.

**An Unsigned Proposal/Proposer Certification Sheet  
 May Be Cause For Rejection**

1. Company Name	2. Telephone Number ( )	2a. Fax Number ( )		
3. Address				
Indicate your organization type:				
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation		
Indicate the applicable employee and/or corporation number:				
7. Federal Employee ID No. (FEIN)	8. California Corporation No.			
9. Indicate applicable license and/or certification information:				
10. Proposer's Name (Print)	11. Title			
12. <b>Signature</b>	13. Date			
14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:				
<table border="0"> <tr> <td style="width: 50%; vertical-align: top;">           a. California Small Business Enterprise            Yes <input type="checkbox"/> No <input type="checkbox"/>            If yes, enter certification number:            _____         </td> <td style="width: 50%; vertical-align: top;">           b. Disabled Veteran Business Enterprise            Yes <input type="checkbox"/> No <input type="checkbox"/>            If yes, enter your service code below:            _____         </td> </tr> </table>			a. California Small Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number: _____	b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below: _____
a. California Small Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number: _____	b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below: _____			
<p><b>NOTE:</b> A copy of your Certification is required to be included if either of the above items is checked "Yes".</p> <p>Date application was submitted to OSBCR, if an application is pending:</p>				

**Bidder Declaration**

State of California—Department of General Services, Procurement Division  
 GSPD-05-105 (EST 8/95)

Solicitation Number \_\_\_\_\_

**BIDDER DECLARATION**

1. Prime bidder information (**Review attached Bidder Declaration Instructions prior to completion of this form**):
- a. Identify current California certification(s) (**MB, SB, SB/NVSA, DVBE**): \_\_\_\_\_ or **None** \_\_\_\_ (If "None," go to Item #2)
  - b. Will subcontractors be used for this contract? **Yes** \_\_\_\_ **No** \_\_\_\_ (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.
- 
- c. If you are a California certified DVBE:
    - (1) Are you a broker or agent? **Yes** \_\_\_\_ **No** \_\_\_\_
    - (2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? **Yes** \_\_\_\_ **No** \_\_\_\_ **N/A** \_\_\_\_

2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?

**CERTIFICATION: By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.**

**BIDDER DECLARATION Instructions**

**All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.**

- 1.a.** Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:
- Microbusiness (MB)
  - Small Business (SB)
  - Small Business Nonprofit Veteran Service Agency (SB/NVSA)
  - Disabled Veteran Business Enterprise (DVBE)
- 1.b.** Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No," proceed to Item #1.c. If "Yes," enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.
- Bidders certified as MB, SB, SB/NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999(e)(2)(A) for DVBEs and Government Code Section 14637(d)(4)(A) for small/microbusinesses. For questions regarding commercially useful function determinations made in conjunction with certification approval, contact the Department of General Services, Procurement Division, Office of Small Business and DVBE Certification (OSDC), OSDC Certification and Compliance Unit via email at: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)
- Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.
- Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.
- 1.c.** This item is only to be completed by businesses certified by California as a DVBE.
- (1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No." The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- (2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If not bidding rental equipment, mark "N/A" for "not applicable."
- 
- 2.** If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page \_\_\_\_ of \_\_\_\_" on the form.
- If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page \_\_\_\_ of \_\_\_\_" accordingly.

**2. (continued) Column Labels**

**Subcontractor Name, Contact Person, Phone Number & Fax Number**—List each element for all subcontractors.

**Subcontractor Address & Email Address**—Enter the address and if available, an Email address.

**CA Certification (MB, SB, DVBE or None)**—If the subcontractor possesses a current State of California certification(s), verify on the OSDC website ([www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)) that it is still valid and list all current certifications here. Otherwise, enter "None." [Note: A SB/NVSA should not be participating as a subcontractor]

**Work performed or goods provided for this contract**—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

**Corresponding % of bid price**—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

**Good Standing?** Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, and/or DVBE status
- Is not listed on the OSDC website as ineligible to transact business with the State

**51% Rental?**—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

- Enter "N/A" if the:
- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
  - Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "Yes" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "No" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

**Read the certification at the bottom of the page and complete the "Page \_\_\_\_ of \_\_\_\_" accordingly.**

**Independence Questionnaire/Conflicts of Interest Disclosure**

**Independence Questionnaire for** \_\_\_\_\_  
(type or write consultant's name)

*Government Auditing Standards* (GAO 2011) Revision require that auditors be free both in fact and appearance from personal and external impairments to independence. To ensure that the independence standard is met, each consultant must disclose any impairment related to the entities or programs he/she will be auditing, which are listed below.

*Audited Entities:* \_\_\_\_\_

Do you have any of the following personal impairments:

- A family member who is a director, officer, or employee, and is in a position to exert direct and significant control over of the audited entity or program?
- A financial interest that is direct, or is significant/material, though indirect, in the audited entity?
- A decision-making role that could affect the entity's operations?
- Biases about policies or preconceived notions about the programs?
- Seeking employment with the audited entity?

If you responded yes to any of the above, please describe the impairment.

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Do you have any external impairment that would restrict your work or interfere with your ability to form independent and objective conclusions. External impairments are external pressures, actual or perceived, from management or employees of the audited entity that would deter the auditor from acting objectively and exercising professional skepticism?

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If you responded yes, please describe the impairment.

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Signed \_\_\_\_\_

Date \_\_\_\_\_

**Required Attachment Checklist**

A complete proposal or proposal package will consist of the items identified below.

Complete this checklist to confirm the items in your proposal. Place a check mark or "X" next to each item that you are submitting to the State. For your proposal to be responsive, all required attachments must be returned. This checklist should be returned with your proposal package.

<u>Attachment</u>	<u>Attachment Name/Description</u>
_____ Attachment 1	Required Attachment Checklist ( <b>Attachment L</b> )
_____ Attachment 2	Six Copies of Proposal (in a sealed envelope)
_____ Attachment 3	Six Copies of Cost Proposal (separate from Proposal and in a sealed envelope)
_____ Attachment 4	Independence Questionnaire /Conflicts of Interest Disclosure ( <b>Attachment K</b> )
_____ Attachment 5	Confidentiality/Nondisclosure Agreement ( <b>Attachment C</b> )
_____ Attachment 6	Bidder Declaration ( <b>Attachment J</b> )
_____ Attachment 7	Certification of Special Terms and Conditions ( <b>Attachment G</b> )
_____ Attachment 8	Proposal/Proposer Certification Sheet ( <b>Attachment I</b> )
_____ Attachment 9	Darfur Contracting Certification ( <b>Attachment H</b> )
_____ Attachment 10	Encryption and Information Privacy Policy ( <b>Attachment D</b> )
_____ Attachment 11	Target Area Contract Preference Act ( <b>Attachment M</b> )

STD. 890 (REV. 1/2005) (FRONT)  
**TARGET AREA CONTRACT PREFERENCE ACT**  
**PREFERENCE REQUEST FOR GOODS AND SERVICES SOLICITATIONS**

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES  
 DISPUTE RESOLUTION AND PREFERENCE PROGRAMS

Complete this form to request TACPA preferences for this bid.

SOLICITATION NUMBER	AGENCY/DEPT
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Target Area Contract Preference Act (TACPA) preferences are available only if the lowest responsible bid and resulting contract exceeds \$100,000. Your firm must be California based. You must certify, under penalty of perjury, to perform either 50% of the labor hours required to complete a contract for GOODS, or 90% of the labor hours required to complete a contract for SERVICES in the Target Area Contract Preference Act zone(s) you identify in Section I. The TACPA provides bid selection preferences of 5% for eligible worksites (Section I), and 1% to 4% for hiring eligible workforce employees (Section II). To identify Census Tract and Block Group numbers contact the city or county Planning and Development Commission for the intended worksite or visit the U.S. Census Bureau website (www.census.gov).

**Section I. 5% WORKSITE(S) PREFERENCE ELIGIBILITY AND LABOR HOURS**

To the Bidder: Preference may be denied for failure to provide the following required information:

- (1) Identify each firm in the supply chain, including yours, that will perform any of the contract labor hours required to complete this contract. Identify your role in the distribution process. Transportation hours performed by each carrier must be reported separately.
- (2) List complete addresses for each firm named below.
- (3) Report projected number of labor hours required to perform the contract for each firm.
- (4) Enter the CENSUS TRACT number.
- (5) Enter the BLOCK GROUP number.
- (6) Identify the California designated TACPA worksite(s) by entering the proper Criteria letter A, B, C, D, E, F (see reverse for instructions) in the Criteria column.

(1) FIRM NAME and CONTRACT FUNCTION: (Manufacturing, transportation, shipping, warehousing, admin., etc.) Use additional pages, as needed, to fully report worksite information.	(2) WORKSITE ADDRESS Street Address, City, County, State, Zip Code, Phone Number	(3) PROJECTED LABOR HOURS	COMPLETE FOR ALL SITES LOCATED WITHIN A TACPA PREFERENCE AREA(S)		
			(4) TRACT NUMBER	(5) BLOCK NUMBER	(6) CRITERIA (A - F)
<b>TOTAL PROJECTED LABOR HOURS:</b>		0.00			

**Section II. 1% TO 4% WORKFORCE PREFERENCE**

Bidders must qualify their firm's worksite eligibility to request an additional 1% to 4% workforce preference in Section II.

- I request a 1% preference for hiring eligible persons to perform 5 to 9.99% of the total contract labor hours.
- I request a 2% preference for hiring eligible persons to perform 10 to 14.99% of the total contract labor hours.
- I request a 3% preference for hiring eligible persons to perform 15 to 19.99% of the total contract labor hours.
- I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours.

**Section III. CERTIFICATION FOR WORKSITE AND WORKFORCE PREFERENCES**

To receive TACPA preferences, the following certification must be completed and signed by the Bidder.

I hereby certify under penalty of perjury that the bidder (1) is a California based company as defined in the TACPA regulations; (2) shall ensure that at least 50% of the labor hours required to complete a contract for Goods, or 90% of the labor hours to complete a Services contract shall be performed at the designated TACPA worksite(s) claimed in Section I; (3) shall hire persons who are TACPA eligible employees to perform the specified percent of total contract labor hours as claimed in Section II; (4) has provided accurate information on this request. I understand that any person furnishing false certification, willfully providing false information or omitting information, or failing to comply with the TACPA requirements is subject to sanctions as set forth in the statutes.

BIDDER'S NAME & TITLE	BIDDER'S SIGNATURE	PHONE NUMBER	DATE
		FAX NUMBER	

STD. 830 (REV. 1/2005) (REVERSE)

**TARGET AREA CONTRACT PREFERENCE ACT  
PREFERENCE REQUEST FOR GOODS AND SERVICES SOLICITATIONS**

**Target Area Contract Preference Act References and Instructions**

The Target Area Contract preference Act (TACPA), GC §4530 et seq., and 2 CCR §1896.30 et seq., promotes employment and economic development at designated distressed areas by offering 5% worksite and 1% to 4% workforce bidding preferences in specified state contracts. The TACPA preferences do not apply to contracts where the worksite is fixed by the contract terms. These preferences only apply to bidders who are California based firms, and only when the lowest responsible bid and resulting contract exceed \$100,000. Bidders must certify, under penalty of perjury to perform either 50% (for GOODS contracts) or 90% (for SERVICES contracts) of the labor hours required to complete this contract in the eligible TACPA area worksite(s) identified in Section I on the reverse side of this page. TACPA preferences are limited to 9%, or a maximum of \$50,000 per bid. In combination with any other preferences, the maximum limit is 15% of the lowest responsible bid; and, in no case more than \$100,000 per bid.

**Section I  
Worksite Preference Eligibility and Labor Hours**

Bidders must identify at least one eligible TACPA worksite by entering the criteria letter A, B, C, D, E or F in the "Criteria" column and enter the "Census Tract" and "Block Group" Numbers to be eligible for the preference. You must name each and every firm or site where contract labor hours will be worked. Preference requests may be denied if an eligible California TACPA worksite is not identified, or all firms performing contract labor hours are not identified. Enter one of the following "Criteria" letters to identify each TACPA worksite on the reverse page:

- A. The firm is located in a California eligible distressed area(s).
- B. The firm will establish a worksite(s) in a California eligible distressed area(s).
- C. The firm is in a census tract with a contiguous boundary adjacent to a California eligible distressed area.
- D. The firm will establish a worksite(s) located directly adjoining a valid TACPA census tract/block group that when attached to the California eligible distressed area(s) forms a contiguous boundary.
- E. The bidder will purchase the contract goods from a manufacturer(s) in a California eligible distressed area(s). **This option applies to solicitations for GOODS only.**
- F. The bidder will purchase contract goods from a manufacturer(s) in directly adjoining census tract blocks that when attached to the California eligible distressed area(s) forms a contiguous boundary. **This option applies to solicitations for GOODS only.**

Enter labor hours for each listed firm and site. The hours shall be reasonable and shall only include the labor hours necessary and required to complete the contract activities. Artificially increasing hours at a claimed TACPA worksite, or understating labor hours worked outside the eligible worksite may result in a denied preference request. Do not include machine time and non-labor time when projecting contract labor hours. Report all bidder work hours and those of any subcontractor performing this contract. All transportation hours must be reported for each carrier separately and must not be combined or included with hours for manufacturing, processing, or administration, or at any eligible TACPA site. Failure to list all the labor hours to be performed at the reportable sites will result in a denial of this preference request.

The bidder must explain, by activity, their firm's projected contract labor hours by completing and signing the *Bidder's Summary* form (included with this solicitation).

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES  
DISPUTE RESOLUTION AND PREFERENCE PROGRAMS

If supplying goods, the bidder must also provide a completed and signed *Manufacturer's Summary* form (included with this solicitation) that specifies the number of projected labor hours necessary to make the product(s).

**Section II  
Workforce Preference**

Eligibility to request a workforce preference is based on the bidder first claiming and receiving approval of the 5% TACPA worksite preference. The workforce preferences are only awarded if the bidder hires and employs the TACPA qualified individuals. Workforce preferences will not be approved for another firm's employees. By claiming a workforce preference percentage, the bidder must have its eligible employees perform the specified percentage of the total contract workforce labor hours. See Section I, "Total Projected Labor Hours," STD. 830. To claim the workforce preferences select or check the appropriate box for percent of requested bid preferences in Section II.

**Section III  
Certification for Worksite and Workforce Preferences**

Bidder must sign, under penalty of perjury, the certification contained in Section III to be eligible for any of the preferences requested pursuant to this form. The penalties associated with the TACPA statute are: GC §4535.1, a business which requests and is given the preference by reason of having furnished a false certification, and which by reason of that certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

- (a) Pay to the State any difference between the contract amount and what the State's cost would have been if the contract had been properly awarded.
- (b) In addition to the amount specified in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.
- (c) Be ineligible to directly or indirectly transact any business with the State for a period of not less than six months and not more than 36 months.

Prior to the imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days notice of the time and place thereof. The notice shall state the reasons for the hearing.

**If you receive an award based on these preferences you will be required to report monthly on your contract performance, labor hours, and TACPA compliance.**

For questions concerning preferences and calculations, or if a bid solicitation does not include preference request forms, please call the awarding Department's contract administrator. Only another California certified small business can use TACPA, EZA or LAMBRA preferences to displace a California certified small business bidder.

To identify TACPA distressed worksites contact the local city or county Planning/Economic Development offices of the proposed worksite, or go to <http://factfinder.census.gov> and click on "Enter a street address" to find a Census Tract and Block Group. Verify the Census Tract and Block numbers for TACPA sites by calling the DGS, Procurement Division preference line at (916) 375-4609.